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PAPERS

PRESENTED TO THE

HOUSE OF ASSEMBLY

OF THE

PROVINCE OF ONTARIO

AND

RESOLUTIONS MOVED

IN THE SESSION OF 1882,

ON THE SUBJECT OF THE

BOUNDARY AWARD.



317443
10-7-35

Toronto:

PRINTED BY C. BLACKETT ROBINSON, 5 JORDAN STREET.
1882.

MAP OF CANADA

To illustrate the questions in dispute with the
PROVINCE OF ONTARIO.

COMPILED BY G. B. KIRKPATRICK, P.L.S.
Department of Crown Lands,
ONTARIO
May 12th 1882.

NOTE.

The part striped with yellow and red crosswise, denotes that part of the Territory awarded to Ontario which is now claimed by Manitoba and the Dominion.
The part with yellow stripes only, is transferred by 44 Vict. Cap. 14 D. to Manitoba conditionally.
The part with green stripes only, is transferred by 39 Vict. Cap. 21, D. to Keewatin conditionally.
The part striped with red only, denotes that part of the awarded Territory which is claimed by the Dominion.

Copp, Clark & Co. Lith. Toronto

TABLE OF AREAS.

Area of British Columbia	390,344 Sq. Miles.
Original Area of Keewatin according to Dominion present Contention	309,000
Present Area of Keewatin according to Dominion Contention	183,753
Another Estimate of Keewatin is	216,000
Area of Ontario according to award	197,000
Area of Ontario according to Dominion Contention	109,480
Area of Quebec, South of Height of Land	193,355
Another Estimate of Quebec, South of Height of Land, is	210,000
Area of Quebec, North of Height of Land	not computed
Area of Manitoba according to Dominion Contention	151,411 Sq. Miles.
Area of New Brunswick	27,912
Area of Nova Scotia	21,791
Area of Prince Edward Island	2,133
North West Territories	1,743,589
Total Area of Dominion	5,406,542

Those marked with * are taken from Sir, R. C. Campbell's speech in Senate, March 11th 1881.



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BOUNDARY AWARD.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL ON THE 12TH NOVEMBER, 1874.*

On a memorandum dated 12th November, 1874, from the Hon. Mr. Mackenzie, stating that he recommends concurrence in the proposition of the Government of Ontario to determine, by means of a reference, the northern and western boundaries of that Province relatively to the rest of the Dominion.

That the Ontario Government having named the Hon. William Buell Richards, Chief Justice of Ontario, as one of the referees, he submits the name of the Hon. Lemuel Allan Wilmot, formerly Lieutenant-Governor of the Province of New Brunswick, to act in conjunction with him, and advises that authority be given them to agree upon a third person, not being a resident of Canada, and that the determination of a majority of such three referees be final and conclusive upon the limits to be taken as and for such boundaries respectively.

He further recommends that the Dominion agree to concurrent action with the Province of Ontario in obtaining such legislation as may be necessary for giving binding effect to the conclusions arrived at, and for establishing the northern and western limits of the Province of Ontario in accordance therewith.

The Committee submit the above recommendations for your Excellency's approval.

Certified.

W. A. HIMSWORTH,
C. P. C.

ORDER IN COUNCIL (ONTARIO), APPROVED BY THE LIEUTENANT-GOVERNOR THE 25TH DAY OF NOVEMBER, 1874.*

The Committee of Council have had under consideration the annexed Report of the Hon. the Treasurer, dated 10th November, 1874, with reference to the western and northern boundaries of Ontario, and advise that the action of the Treasurer be approved of by your Excellency, and that the recommendations contained in the said Report be acted upon.

Certified.

J. G. SCOTT,
Clerk Executive Council, Ontario.

REPORT OF THE HON. ADAM CROOKS, MEMBER OF THE EXECUTIVE COUNCIL, TO THE LIEUTENANT-GOVERNOR, REFERRED TO IN THE FOREGOING ORDER IN COUNCIL OF 25TH NOVEMBER, 1874. *

May it please your Excellency :

The undersigned has the honour to report the following on the subject of the western and northern boundaries of the Province of Ontario :

By Chapter 28 of the Acts of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the Session held in the thirty-fourth and thirty-fifth years of Her Majesty's reign, and intituled "An Act respecting the establishment of Provinces in the Dominion of Canada," it was enacted that the Parliament of Canada might, from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish or otherwise alter the limits of such Province, upon such terms and conditions as might be agreed to by the said Legislature, and might, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby. By a resolution of the Legislative Assembly, passed on the 3rd day of March last, the House approved of the reference of the question of the western boundary of this Province to arbitration, or to the Privy Council, according as the Lieutenant-Governor in Council should see fit. It is considered by your Excellency's Council to be expedient that the question of the northern boundary of this Province should be determined at the same time as the western boundary, though the determination of the northern boundary is not of so pressing importance as the other. In view of these objects, the undersigned, before his late visit to Ottawa on other public business, was authorized by the other members of your Excellency's Council to propose (subject to your Excellency's approval) to the Government of the Dominion that the question concerning the northern and western boundaries of the Province of Ontario should be determined by a reference to arbitrators to be mutually agreed upon, and whose standing and ability might readily be expected to secure for their decision the confidence alike of the people of Ontario and the people of the Dominion.

Your Excellency's Council were of opinion that a decision by such arbitrators is likely to be more prompt and perhaps more satisfactory than any other mode of decision which is attainable.

The undersigned was also authorized to suggest the name of the Hon. William Buell Richards, Chief Justice of Ontario, as one of the arbitrators, subject to your Excellency's approval.

Accordingly, the undersigned while at Ottawa conferred with the Premier and other members of the Dominion Government on the subject of the said matters, and made the above suggestions to them.

The Government of the Dominion concurred in the views expressed on the part of the Government of Ontario, and proposed on behalf of the Dominion the name of the Hon. Lemuel Allan Wilmot, late Lieutenant-Governor of New Brunswick, to act in conjunction with the said Chief Justice, and that authority be given to the said the Hon. William Buell Richards and the Hon. Lemuel Allan Wilmot, to agree upon a third person to be associated with them, such third person not being a resident of Canada, and that the determination of a majority of such referees should be final and conclusive upon the limits to be taken as and for such boundaries as aforesaid respectively.

The undersigned recommends that the Province agree to concurrent action with the Dominion in obtaining such legislation as may be necessary for giving binding effect to the conclusion which may be arrived at, and for establishing the northern and western boundaries of the Province of Ontario in accordance therewith.

ADAM CROOKS.

10th November, 1874.

ORDER IN COUNCIL (ONTARIO), APPROVED BY THE LIEUTENANT-GOVERNOR THE 31ST DAY OF JULY, 1878.*

Upon consideration of the Report of the Honourable the Attorney-General, dated 30th day of July, 1878, recommending that the Honourable Robert A. Harrison, Chief Justice of Ontario, be appointed arbitrator in the matter of the northerly and westerly boundaries of the Province of Ontario in relation to the rest of the Dominion, in the room and stead of the Honourable William Buell Richards, who, since his appointment as such arbitrator, was appointed Chief Justice of the Supreme Court, and subsequently resigned his appointment as arbitrator, the Government of the Dominion having named Sir Francis Hincks one of the arbitrators in the room and stead of the Honourable Lemuel Allan Wilmot, deceased, and the Right Honourable Sir Edward Thornton having been named on behalf of the Governments of the Dominion and Ontario; and also recommending that the determination of the award of such three arbitrators, or a majority of them, in the matter of the said boundaries respectively, be taken as final and conclusive; and also that the Province of Ontario agree to concurrent action with the Government of the Dominion in obtaining such legislation as might be necessary for giving effect to the conclusion arrived at by the said arbitrators, and for establishing the northern and western limits of the Province of Ontario in connection with:

The Committee of Council advise that the foregoing recommendations be adopted and approved of by your Honour.

Certified.

LONSDALE CAPREOL,

Assistant Clerk, Executive Council, Ontario.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL ON THE 31ST JULY, 1878.*

The Committee of Council have had under consideration the subject of the northern and western boundaries of the Province of Ontario, which under previous Orders in Council had been referred to the Honourable W. B. Richards, then Chief Justice of Ontario, named as referee on behalf of that Province, but who was subsequently replaced by the present Chief Justice, the Honourable R. A. Harrison, and the Honourable Sir

Francis Hincks, who has been named on behalf of the Dominion; and whereas subsequently to the action taken under Order of Council of 12th November, 1874, it was mutually agreed between the Governments of the Dominion and Ontario, that the Right Honourable Sir Edward Thornton should be selected as third referee, the Committee recommend that such selection be confirmed by Minute of Council, and that the determination of such three referees be final and conclusive upon the limits to be taken as and for each boundary respectively.

Certified.

W. A. HIMSWOTH,
Clerk Privy Council, Canada.

AWARD OF THE ARBITRATORS.*

TO ALL TO WHOM THESE PRESENTS SHALL COME :

The undersigned having been appointed by the Governments of Canada and Ontario as arbitrators to determine the northerly and westerly boundaries of the Province of Ontario, do hereby determine and decide that the following are and shall be such boundaries ; that is to say :—

Commencing at a point on the southern shore of Hudson's Bay, commonly called James' Bay, where a line produced due north from the head of Lake Temiscaming would strike the said south shore ; thence along the said south shore westerly to the mouth of the Albany River ; thence up the middle of the said Albany River, and of the lakes thereon, to the source of the said river at the head of Lake St. Joseph ; thence by the nearest line to the easterly end of Lac Seul, being the head waters of the English River ; thence westerly through the middle of Lac Seul and the said English River to a point where the same will be intersected by a true meridional line drawn northerly from the international monument placed to mark the most north-westerly angle of the Lake of the Woods by the recent Boundary Commission ; and thence due south, following the said meridional line to the said international monument ; thence southerly and easterly, following upon the international boundary line between the British possessions and the United States of America, into Lake Superior.

But if a true meridional line drawn northerly from the said international boundary at the said most north-westerly angle of the Lake of the Woods, shall be found to pass to the west of where the English River empties into the Winnipeg River, then, and in such case, the northerly boundary of Ontario shall continue down the middle of the said English River to where the same empties into the Winnipeg River, and shall continue thence on a line drawn due west from the confluence of the said English River with the said Winnipeg River, until the same will intersect the meridian above described ; and thence due south, following the said meridional line to the said international monument ; thence southerly and easterly, following upon the international boundary line between the British possessions and the United States of America, into Lake Superior.

Given under our hands, at Ottawa, in the Province of Ontario, this third day of August, 1878.

ROBT. A. HARRISON.
EDWD. THORNTON.
F. HINCKS.

Signed and published in the presence of

E. C. MONK.
THOMAS HODGINS.

* Sess. Papers, Ont., 1882, No. 23. Report of Proceedings before the Arbitrators, p. 67 ; Report Ho. Coms. Committee, 1880, p. 480.

REPORT OF THE ATTORNEY-GENERAL OF ONTARIO ON THE BOUNDARY QUESTION, 1st NOVEMBER, 1881.*

The undersigned has the honour to submit the following report on the controversy of the last few years with respect to that large part of this Province to which the Dominion Government persistently refuse to acknowledge our title, notwithstanding the unanimous award, three years ago, (3rd August, 1878,) of the Right Honourable Sir Edward Thornton, Her Majesty's Ambassador at Washington, the Honourable Chief Justice Harrison, and the Honourable Sir Francis Hincks, K.C.M.G., mutually chosen by the two Governments to decide the matter.

The territory in question consists of two parts, standing on a different footing from each other: (1) Territory lying north and west of the Height of Land which divides the waters flowing into the Great Lakes from those flowing into Hudson's Bay; and (2) the territory lying south and east of the same Height of Land. By an Act passed at its last session, the Federal Parliament transferred to the Province of Manitoba (so far as regards Provincial jurisdiction) the claim which the Federal Government made to the territory south and east of the Height of Land, comprising an area of about 7,000 square miles, and to so much of the territory north and west of the same Height of Land as lies between the Province of Manitoba and the Province of Ontario, comprising a further area of about 32,000 square miles.

The territory lying to the *north* and *west* of the Height of Land is claimed on behalf of the Dominion, as having become entitled to it in 1870, under a transfer or release of the interest theretofore claimed by the Hudson's Bay Company therein, under their Charter dated 2nd May, 1670.

The disputed territory lying to the *south* and *east* of the same Height of Land was not claimed by the Hudson's Bay Company under their Charter, nor was there any ground or pretence for so claiming it. Before 1870 this part had been treated at all times, and for all purposes, as belonging to this section of Canada. As such it had before Confederation been the subject of grants, licenses and other transactions on the part of the Provincial Government. So much of the territory as was from time to time settled or occupied by a white population was governed, without any question on the part of anybody, by the laws, courts and officers of Upper Canada; and since Confederation the same territory has uninterruptedly been governed by the laws, courts and officers of Ontario; it has had municipal organization as part of this Province; the Ontario District of Algoma has for all purposes of the Dominion and Province been considered to include it; and Provincial money has from time to time been expended in making surveys and bridges and other improvements, and in administering justice and maintaining peace and order in the territory.

The land on this side of the Height of Land is part of certain territory which was the subject of an Order in Council of the Government of Canada, and of a treaty by that Government with the Indians, as long ago as 1850. On the 11th January, 1850,† the Government of Canada, by this Order in Council, which was approved by His Excellency the Governor-General, authorized the Honourable W. B. Robinson "on the part of the Government to negotiate with the several tribes [of Indians] for the adjustment of their claims to the lands in the vicinity of Lakes Superior and Huron, or of such portions of them as may be required for mining purposes." In pursuance of this authority, Mr. Robinson, "on behalf of Her Majesty the Queen," on the 7th September, 1850, entered into an agreement with "the principal men of the Ojibbeway Indians, inhabiting the northern shore of Lake Superior, in the said Province of Canada, from Batchewanaung Bay to Pigeon River at the western extremity of said lake," whereby, in consideration of £2,000 in hand paid, "and for the further perpetual annuity of £500 to be paid and

* Sess. Papers, Ont., 1882, No. 23.

† Book of Arbitration Documents, p. 23.

delivered to the said chiefs and their tribes at a convenient season of each summer, not later than the 1st day of August, at Michipicoten and Fort William, they the said chiefs and principal men [did] surrender, cede, grant and convey unto Her Majesty, her heirs and successors, all their right, title and interest in the territory" therein described; and thereby, "on behalf of Her Majesty and the Government of this Province," it was agreed to make the said payment, "and, further, to allow the said chiefs and their tribes the full and free privilege to hunt over the territory now ceded by them, to fish in the waters thereof as they have heretofore been in the habit of doing, saving and excepting only such portions of the said territory as may from time to time be sold or leased to individuals, or companies of individuals, and occupied by them with the consent of the Provincial Government." The agreement also contained provisions with respect to the sale of mining locations or other property by "the Government of this Province." The Government of the Province acted on this treaty, with the consent and approval of Her Majesty's representative, the Governor-General, up to the time of Confederation; and the Governments of Canada and Ontario continued to act upon it afterwards.

Assuming that this territory, south and east of the Height of Land, is not within Ontario, the Dominion had no claim to it until an Order was made by Her Majesty in Council, on the 31st July, 1880, whereby it was ordered and declared that "from and after the 1st of September, 1880, all British territories and possessions in North America, not already included within the Dominion of Canada, and all islands adjacent to any of such territories or possessions, shall (with the exception of the Colony of Newfoundland and its dependencies) become and be annexed to and form part of the said Dominion of Canada, and become and be subject to the laws, for the time being, in force in the said Dominion, in so far as such laws may be applicable thereto."

The claim to the territory north and west of the Height of Land, as well as to the land south and east, is not new. All which is now in dispute, and more, were always claimed as part of Upper Canada by the Province of Canada, in its contests with the Hudson's Bay Company and otherwise, long before the Confederation Act was thought of, and up to the time that that Act went into effect. The same claim was continuously insisted on afterwards by the Government of the Dominion, until the contest with the Company was put an end to in 1870, by its interests on this continent (whatever they were) being transferred to Canada.

To prevent the recognition of the award by members of the House of Commons from constituencies lying within the other Provinces, the award has been represented as giving to this Province an extensive territory to which it had no right; while the truth is, that the right of Ontario to all the territory awarded was established by an immense mass of evidence. The further fact is kept in the background, that the territory awarded to this Province is less than the Governments of the country had, up to the year 1870, justly claimed to belong to this section of Canada.

With the same view, it has been suggested that this territory, if confirmed to Ontario, would, in the not distant future, give to this Province undue weight in the Dominion. With this territory Ontario has an area of about 200,000 square miles; but British Columbia has 390,344 square miles; † Keewatin District (as limited by the recent Manitoba Act), about 260,000; and Quebec is admitted to have 193,355, † and probably has considerably more, as the estimate of that area appears to assume that the Province of Quebec does not extend to the shore of Hudson's Bay. Outside of its present Provinces, the Dominion has still an estimated area of more than 2,000,000 square miles for new Provinces. The loss of the territory in dispute would reduce the area of Ontario to 109,480 square miles. † Why should the area of our Province be reduced to half that of Quebec? or to less than half the area of Keewatin? or to less than one-third the area of British Columbia? The addition of the same territory to Manitoba would give to that Province an area of 154,411 square miles.* Why is the area of Ontario to be reduced, and that of Manitoba extended, until Manitoba shall have an area one-half greater than Ontario?

* Senate Debate on the Manitoba Bill of 1881, pp. 607, 608.

Having reference to the figures thus given, the notion of Ontario having in the future undue influence in the Dominion, as compared with its other Provinces, is absurd, even if the Provinces were represented in the House of Commons as Provinces; which they are not. The members of that body represent the counties, ridings, districts, and cities of the Dominion, and would represent their respective constituencies whether these, for Provincial purposes, were in one Province or another.

The undersigned has said that our claim to the territory awarded to us is not new. A few of the many facts which illustrate this statement may be mentioned.

On the 4th December, 1856,* the Secretary of State for the Colonies addressed to the Governor-General of Canada a despatch respecting the Hudson's Bay Company; and respecting certain important questions which the Company had raised, and the steps which Her Majesty's Government had in contemplation regarding them. The despatch referred, amongst other things, to the Company's claim to "all the region under British Dominion watered by streams flowing into Hudson's Bay;" and stated that Her Majesty's Government had "determined on bringing the whole subject under the investigation of a Committee of the House of Commons at the earliest convenient time;" that the inquiry would be mainly directed to the question of the renewal of a certain license granted to the Company in 1838, but that "it must incidentally embrace the general position and prospects of the Hudson's Bay Company; and, as many points might arise in the course of inquiry which might affect the interests of Canada, His Excellency was instructed to consider, with the advice of his Council, the question whether it might be desirable to send witnesses to appear before the Committee, or in any other manner to cause the views of the Provincial Government, and the interests of the Canadian community, to be represented before the Committee.

In reply, on the 17th January, 1857, a Minute of Council,† approved by His Excellency, was transmitted to the Colonial Secretary, in which it was stated, amongst other things, that "the general feeling here is strongly that the western boundary of Canada extends to the Pacific Ocean;" that the Committee of Council were most anxious that Canadian interests should be properly represented before the proposed Committee of the House; and that opportunity should be afforded for carefully and closely watching any evidence which might be adduced before that body; that the Committee would take the earliest occasion to suggest to His Excellency the manner in which they conceived this could be best accomplished; that situated as Canada is, she necessarily has an immediate interest in every portion of British North America; and that the question of the jurisdiction and title claimed by the Hudson's Bay Company is to her of paramount importance.

An official paper by the Commissioner of Crown Lands of Canada was prepared,‡ claiming, on grounds therein elaborately set forth, that the westerly boundary of the Province extended "as far as British territory, not otherwise organized, would carry it, which would be to the Pacific; or, if limited at all, it would be by the first waters of the Mississippi which a due west line from the Lake of the Woods intersected, which would be the White Earth River;" and with respect to the northerly boundary, the Commissioner pointed out that "the only possible conclusion is, that Canada is either bounded in that direction by a few isolated posts on the shore of Hudson's Bay, or else that the Company's territory is . . . a myth, and consequently that Canada has no particular limit in that direction."

The Honourable William H. Draper, Chief Justice of the Court of Common Pleas of Upper Canada, was appointed by the Government of Canada as a special agent to represent "Canadian rights and interests before the proposed Committee of the House of Commons." Instructions for his mission were communicated to him by letter on the 20th February, 1857.

* Sessional Papers, Canada, 1857, Vol. 15, No. 17.

† *Ibid.*

‡ Book of Arbitration Documents, p. 243; Journals of Legislative Assembly, Canada, Vol. 15, No. 17 (B).

All these papers were brought down to the Legislative Assembly as Returns to Addresses of that honourable body, dated respectively the 2nd and 16th March, 1857, and are to be found in the appendix to the Sessional Papers of that year (No. 17).

The Government of Canada thus sent Chief Justice Draper to England for the purpose of resisting the very claim of the Hudson's Bay Company which the Dominion afterwards made and still makes as the transferees of that Company; and that distinguished jurist resisted the Company's claim accordingly before a Committee of the House of Commons, and otherwise, in that year.

In the same session, viz., on the 11th May, 1857, the Legislative Assembly appointed a Select Committee to receive and collect evidence and information as to the rights of the Hudson's Bay Company under their charter, and as to other matters relating to the territory. The only evidence taken was against the claim then made by the Company, and now made by the Federal authorities. The Committee made their report on the 8th June, 1857, submitting the evidence to the consideration of the House. The House was prorogued on the 10th June.

Meanwhile, viz., on the 28th May and 4th June, 1857, Chief Justice Draper was examined before the Committee of the House of Commons in England; and, on the subject of the claim of the Hudson's Bay Company, stated (among other things) as follows: "At present it is understood by us that the Hudson's Bay Company claim, as a legal right, all the land which is drained by any streams, no matter how remote their sources may be, which flow into either the Hudson's Bay Straits or Hudson's Bay. We consider that that is an ill-founded claim, principally upon this ground—that it is a claim of which we can find no trace until a very modern period, and is quite inconsistent with the claims advanced by that Company for nearly a century and a half. To save time, I have prepared extracts from various documents emanating from the Company themselves, with some few other documents. It is a paper which it would save a great deal of time to put in, because I can give every place where the extracts are taken from, and therefore reference to the original documents can always be had. I would also desire to say that in every extract which I have made, I have made it a complete extract of all that is stated on the question; and if it involves anything favourable to the Hudson's Bay Company, it will be found in those portions of which I have made the extract."* The paper thus referred to as containing, not merely what favoured the Canadian claim, but also everything favourable to the Hudson's Bay Company, was amongst the papers before the Arbitrators in 1878, having been printed in the Book of Documents for the purposes of the arbitration. (Pages 235 and 240.)

Afterwards, viz., on the 12th of June, 1857, the learned Chief Justice communicated to the Government of Canada his opinion, that if the matter were submitted to the Privy Council, its decision would give "to Canada a clear right west to the line of the Mississippi, and some considerable distance north of what the Hudson's Bay Company claim,"† though not the "territory west of the westernmost head of the Mississippi."‡ The Chief Justice thought that the Canadian Government had claimed too much in claiming beyond that point, to the Rocky Mountains. The award which the Federal authorities refuse to recognize has assigned to us part only of the territory described by the Chief Justice as territory to which we had a "clear right."†

It is further to be noted that public money was from time to time expended by the Province of Canada in opening roads, and otherwise in the now disputed territory.‡

After Confederation, the same views were taken of the territorial question, and the like course of action was pursued by the Dominion Government and Parliament, as had been adopted by the Government and Parliament of the Province.

Thus, in 1868, the sum of \$20,000 was appropriated by the Dominion for the construction of a road from the Lake of the Woods to Fort Garry, on Red River; and

* Hudson's Bay Report, Coms., Eng., 1857, p. 212, Question 4056, p. 374, etc.

† Book of Arbitration Documents, p. 391.

‡ See Sessional Papers, Canada, 1864, No. 62.

the money was spent accordingly. The whole of this road was in territory which the Dominion authorities now say was then no part of Canada.

Again, in an official letter of the Canadian Ministers, Sir George E. Cartier and the Hon. William McDougall, to Sir Frederic Rogers, Bart., Under-Secretary of State for the Colonies, dated 16th January, 1869, they pointed out that "the boundaries of Upper Canada on the north and west were declared, under the authority of the Constitutional Act of 1791, to include 'all the territory to the westward and southward' of the 'boundary line of Hudson's Bay, to the utmost extent of the country commonly called or known by the name of Canada;'" and they added that "whatever doubt may exist as to the 'utmost extent' of old or French Canada, no impartial investigator of the evidence in the case can doubt that it extended to, and included, the country between the Lake of the Woods and Red River. The Government of Canada, therefore, does not admit, but on the contrary denies, and has always denied, the pretensions of the Hudson's Bay Company to any right of soil, beyond that of squatters, in the territory "between the Lake of the Woods and Red River," that being the territory to which the matter which called forth the letter referred.* The Federal Government thus claimed for us a western line beyond the line which the Arbitrators have awarded to us, and insisted that no "impartial investigator" of the evidence could doubt our right to it.

So much as to the views and acts of the Province of Canada and Dominion of Canada until the year 1870. In that year the Federal Government ceased to be "impartial investigators of the evidence." Having obtained a transfer of the interests of the Hudson's Bay Company, that Government soon afterwards reversed the position always theretofore taken in this country with regard to the extent of Canada. They now insist that Canada had more contracted limits than even its old antagonists, the Hudson's Bay Company, had argued for; and that the views maintained and acted upon by Canadian Governments and public men up to 1870 were so utterly and clearly unfounded, that, though confirmed as to part of the territory by solemn award, the award must be resisted both passively and actively, regardless of consequences. The particulars of this transfer of 1870 may here be stated.

By the British North America Act (30 and 31 Victoria, ch. 3, sec. 3), the Provinces of Canada, Nova Scotia and New Brunswick were formed into one Dominion under the name of Canada. By section 6 it was enacted that "the parts of the Province of Canada . . . which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form two separate Provinces—the part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec." And by the 146th section it was enacted that the Queen, by the advice of Her Majesty's Privy Council, might "admit Rupert's Land and the North-Western territory, or either of them, into the Union, . . . subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland."

By a joint Address to Her Majesty from the two Houses of the Canadian Parliament, in December, 1867, it was prayed that Her Majesty would be graciously pleased "to unite Rupert's Land and the North-Western territory with the Dominion of Canada," and it was therein stated "that, upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement would be considered and settled in conformity with the equitable principles which have uniformly governed the Crown in its dealing with the aborigines."†

By another joint Address to Her Majesty from the two Houses of the Canadian Parliament, in May, 1869, it was again prayed that Her Majesty would be graciously pleased "to unite Rupert's Land on the terms and conditions" therein mentioned (but

* Book of Arbitration Documents, p. 323.

† Journals, Canadian Senate, 1867, p. 144.

not material to the present question), "and also to unite the North-Western territory with the Dominion of Canada," as before prayed.*

Accordingly, by an Order in Council, dated 23rd June, 1870, it was ordered and declared by Her Majesty, by and with the advice of Her Privy Council, that from and after the 15th July, 1870, "the said North-Western Territory shall be admitted into and become part of the Dominion of Canada" upon certain terms and conditions therein referred to, and that "Rupert's Land shall, from and after the said date, be admitted into and become part of the Dominion of Canada" upon certain other terms and conditions in the said Order mentioned.†

It has of late been argued, or asserted, that this Order deprived Ontario of any territory theretofore claimed by the Hudson's Bay Company. No contention could be more unfounded. (1) Her Majesty had no power to deprive Ontario of any part of its territory, the British North America Act having expressly declared that the territory "which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario;" and the enactment as to the annexing of the North-Western Territory by Her Majesty in Council was expressly "subject to the provisions of this Act." (2) The Order in Council did not intend to take away any part of our territory.

A year after the claims of the Hudson's Bay Company had been disposed of, viz., on the 17th July, 1871, His Honour the Lieutenant-Governor of this Province, by a despatch addressed to the Secretary of State for the Provinces, called the attention of the Federal Government "to the necessity which exists for the settlement of the true boundary or division line separating the Province of Ontario, from what is known as the North-West Territory," observing that "the importance of accomplishing this object (had) been recognized both by the House of Commons and the Legislature of this Province, and appropriations made by them for defraying the expense of a Commission for that purpose, one member of which to be appointed by His Excellency the Governor-General, and the other by" the Lieutenant-Governor. The despatch referred to "the necessity of having the boundary line in question ascertained without delay."‡

Accordingly, in July, 1871, the Government of the Dominion appointed their Commissioner, and in September, 1871, the Ontario Government appointed theirs.§ These Commissioners were to co-operate with one another in determining the boundary.

On the 1st of October, 1871, J. S. Dennis, an officer in the service of the Dominion Government, at the request of its Premier, made a report to him on the question of the boundaries "between the Province of Ontario and the Dominion lands, or North-West Territories."|| In this report Mr. Dennis maintained—contrary to all Canada's past contentions with the Hudson's Bay Company, and in opposition to all past acts of the successive Governments of Canada—that Ontario did not extend in the west beyond the meridian of the confluence of the Ohio and Mississippi Rivers (longitude about 89°); thus excluding not only "the country between the Lake of the Woods and Red River," but also the Lake of the Woods itself and a breadth of some hundreds of miles between that lake and the said meridian, to which territory the award has declared Ontario to be entitled. The territory thus said not to belong to this Province includes the village of Prince Arthur's Landing and the Township of McIntyre, with a population of 2,500; the Township of Oliver, with a population of 500; the Village of Fort William and Township of Neebing, with a population of 1,250; Mattawan, with a population of 250; and Sibley, 750. There is a further population along the line of the railway works.¶

The report of Mr. Dennis further alleged that the northern boundary of Ontario was the Height of Land already mentioned.

In support of these views, the report contained a statement that the charter of the

* Journals, Canadian Senate, 1869, p. 125.

† Book of Arbitration Documents, pp. 405 *et seq.*

‡ Sessional Papers, Ontario, 1873, No. 44, p. 3.

§ Book of Arbitration Documents, p. 340.

|| Report of Boundary Committee, House of Commons, Can., 1880, p. 1.

See Senate Debates for 1881, p. 607.

Hudson's Bay Company (dated 2nd May, 1670,) described the grant to the Company as "extending over and including all lands and territories drained by the waters emptying into Hudson's Bay." The report was made *ex parte*, and without any communication with the Government of Ontario. The haste with which it was prepared is manifest from the fact that the charter contained no such description as the report thus professed to quote. That description was merely the construction which had in recent times been placed on the charter by the Company itself, and which as well the companies contending with the Hudson's Bay Company, as the Province and Dominion of Canada, had always repudiated. The report makes no reference to, and no doubt was prepared without its author being aware of, some of the most important documents and other proofs on which the rights of Ontario are based. No copy of the report appears to have been communicated to the Ontario Government; and the report was not known to this Government until after it had been produced by Mr. Denuis to the Committee of the House of Commons of Canada in 1880.

By an Order in Council, approved on the 28th of November, 1871,* the constitutional advisers of His Excellency the Governor-General of Canada obtained the sanction of the Crown to the statement that "it was of much consequence that the ascertaining and fixing on the ground of the boundary line in question should be as far as possible expedited."

On the 9th of March, 1872,† the Hon. William McDougall, the Commissioner of the Ontario Government, reported that he had not yet been put in communication with the Commissioner appointed on behalf of the Dominion, but had conferred with certain officers and members of the Dominion Government, and had reason to believe that the Commissioner of the Dominion would take the ground that a line due north from the junction of the Ohio with the Mississippi is the legal western boundary of Ontario, or that the height of land west and north of Lake Superior is the utmost western limit of the Province. Mr. McDougall further stated that his own opinion was that the limit was much further west.

A few days afterwards, viz., on the 14th of March, 1872,‡ a communication was made by the Secretary of State to the Lieutenant-Governor of this Province, claiming in effect, and for the first time, that the westerly boundary of the Province extended only to the more limited of the two boundaries mentioned by Mr. McDougall, viz., to the meridian of the junction of the Ohio and Mississippi, and that the northern boundary extended only to the height of land dividing the waters which flow into the Hudson's Bay from those emptying into the valleys of the Great Lakes. This claim was embodied in a draft of instructions prepared by the Dominion Government, to be given to their Commissioner. The claim was promptly repudiated on behalf of this Province by an Order in Council, passed on the 25th of March, 1872,§ approved by the Lieutenant-Governor, and communicated at once to the Federal Government, to the effect that the Province claimed that the boundary line was very different from the line so defined by the said instructions; that the Province could not consent to the prosecution of the Commission for marking on the ground the line so defined; and that the Commissioner appointed by the Government of Ontario should, therefore, be instructed to abstain from taking any further action under his commission.

By an Order in Council, approved on the 9th of April, 1872,|| the Federal advisers of His Excellency the Governor-General obtained the assent of the Crown to the opinion, that "It is of the greatest consequence to the peace and well-being of the country in the vicinity of the dividing line that no question as to jurisdiction, or the means of prevention or punishment of crime, should arise or be allowed to continue," and that "both

* Sessional Papers, Ontario, 1873, No. 44, p. 6.

† *Ibid.*, p. 8.

‡ *Ibid.*, pp. 14, 15.

§ *Ibid.*, p. 17.

|| Book of Arbitration Documents, p. 342; Sessional Papers, Ontario, 1873, No. 44, p. 18.

Governments would feel it their duty to settle without delay upon some proper mode of determining, in an authoritative manner, the true position of such boundary."

On the 26th of April, 1872,* the Federal Government applied to the Government of Ontario for payment of certain accounts, amounting to \$4,035.75, for the maintenance of a police force at Thunder Bay, and for cash advances for the Court House at Prince Arthur's Landing, the said localities being west of the due north line. On the 25th of June, cheques in favour of the Dominion Government for the sums of \$215.02 and \$793.31 respectively were transmitted by his Honour the Lieutenant-Governor to the Government at Ottawa, in discharge of items in connection with the Court House at Prince Arthur's Landing; and with reference to the other items, for the maintenance of a police force at Thunder Bay, His Honour requested information as to the authority, from the Province of Ontario, upon which the Province was asked to pay therefor. This information does not appear to have been given, and no further payments appear to have been made.

By another Order in Council, approved on the 16th of May, 1872,† His Excellency's Federal advisers obtained the assent of the Crown to the further statement, in reference to the disputed territory, that "it is very material that crime should not be unpunished or unprevented;" and "in this view," the Government of Ontario was "invited to concur in a statement of the case for immediate reference" to the Judicial Committee of the Privy Council of England. It was further stated that "this is the more necessary, as no conventional arrangement between the two Governments as to boundary can confer criminal jurisdiction on the Courts of Ontario, unless the place where any crime may be committed is by law within the Province;" and that "the mineral wealth of the north-west country is likely to attract a large immigration into those parts, and with a view to its development, as well as to prevent the confusion and strife that is certain to arise and continue among the miners and other settlers so long as the uncertainty as to boundary exists," the Government of Ontario was "urged to arrange with that of the Dominion for some joint course of action as to the granting of land and of mining licenses, reservation of royalties, etc.," and for this purpose it was suggested that the Government of Ontario should "appoint a Commissioner to meet the Hon. J. C. Aikins, and arrange some joint system; and that any such arrangement, when ratified by the two Governments, shall be held to bind both, and shall be subject to the decision of the Judicial Committee of the Privy Council upon the question of boundary; and that, after such decision, titles to lands or mining rights shall be confirmed by the Government, whether of Canada or of Ontario, as shall, under the decision of the Judicial Committee, be the proper party to legalize the same."

By an Order in Council, approved by His Honour the Lieutenant-Governor, on the 31st day of May, A.D. 1872,‡ regret was expressed that the Government of Canada did not propose in any respect to modify its views with reference to the boundaries, opposed as those views were to the general tenor of the expressions and conduct of the Governments of the late Province of Canada and of the Dominion in the past. Regret was also expressed that the Government of Canada was not prepared to negotiate for the purpose of arriving at a conventional arrangement as regards the boundaries. It was inferred that the Government of Canada disapproved of that course, in consequence of the difficulty stated in the following extract from a memorandum of the Minister of Justice:—"No conventional arrangement between the two Governments as to boundary can confer criminal jurisdiction on the Courts of Ontario, unless the place where any crime may be committed is by law within the Province;" and attention was called to the third clause of the Act of the Imperial Parliament, passed 29th of June, 1871, cap. 28, which is in these words: "The Parliament of Canada may, from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation

* Book of Arbitration Documents, p. 346; Sessional Papers, Ontario, 1873, No. 44, p. 26.

† Sessional Papers, Ont., 1873, No. 44, p. 20; Book of Arbitration Documents, pp. 343, 344.

‡ Book of Arbitration Documents, p. 344.

of any such increase, or diminution, or alteration of territory in relation to any Province affected thereby." It was observed, that "under the operation of this clause, it is quite possible to arrive at a conventional settlement of the question by the joint action of the Executive and Legislative authorities of the Dominion and of the Province;" and that, with reference to the emergency arising out of the expected immigration during the spring and summer, "a short Act of the Parliament of Canada—providing that the boundaries of Ontario should, for the purposes of criminal jurisdiction, and so far as the Parliament of Canada can provide, be deemed, pending the settlement of the question, to extend as far as the limits which are specified in the memorandum transmitted to the Government of Canada by this Government—would, though open to some objection, afford the best practicable solution of that difficulty." With reference to the proposed submission to the Judicial Committee of the Privy Council, it was remarked that "the solution of the boundary question depends upon numerous facts, the evidence as to many of which is procurable only in America, and the collection of which would involve the expenditure of much time;" and the opinion was expressed that "upon the whole, the more satisfactory way of settling the question, should the Government of Canada still decline to negotiate for a conventional boundary, would be by a reference to a Commission sitting on this side of the Atlantic;" and, "without for the present dealing definitely with the proposal of the Government of Canada for a reference to the Judicial Committee," this counter-suggestion was made to that Government. A "strong conviction" was expressed "that it is the duty of the Government of Ontario to retain, in the meantime, the control of the lands within the boundaries claimed by it; but, as it is anxious that the policy of the Government of Ontario with reference to the disposition of these lands should, so far as practicable, conform to the views of the Government of Canada, it was agreed "that an effort should be made to avoid the possible difficulties arising from the claims put forward by that Government," and with this view, the Honourable R. W. Scott was requested to confer with the Honourable J. C. Aikins, as proposed by the despatch of the 16th May.

By another Order in Council, approved on the 7th November, 1872,* His Excellency the Governor-General's Federal advisers obtained the further sanction of the Crown to the statement that "the importance of obtaining an authoritative decision as to the limits to the north and to the west of the Province of Ontario had already been affirmed by a Minute in Council," and that "the establishment of criminal and civil jurisdiction, and the necessity of meeting the demands of settlers and miners for the acquisition of titles to lands, combined to render such a decision indispensable."

On the 18th March, 1873, T. K. Ramsay, Esq., Q.C., who had previously been employed for this purpose by the Dominion Government,† made a report, giving what he called "the strictly legal view" of the question, and setting forth elaborately and ably whatever could be found or said in support of the limits suggested in Mr. Dennis' report. Mr. Ramsay's investigations and report were made without the knowledge of the Ontario Government, and without his having seen some important documents in favour of the claim of Ontario which came to light afterwards, and were submitted to the Arbitrators.‡ The report was addressed to the Hon. A. Campbell, Postmaster-General, and has appended to it the following memorandum with reference to the territory south and east of the height of land :

"In the report submitted, the strictly legal view has alone been considered, because it alone seemed to be within the scope of my instructions; but from the course of my investigations I could not fail to see that, beyond this, there is another consideration not less important, and that is, the equitable side of the question. In creating the Province of Ontario, it is not possible to conceive that the Imperial Legislature intended to convey to that Province, and to the Province of Quebec, less territory than the late Province of Canada actually enjoyed. Now, it is incontestable that up to 1867 the Government of Canada, *de facto* extended to the height of land which forms the water shed of the water system of the St. Lawrence and the Great Lakes. This is made

* Sessional Papers, Ontario, 1873, No. 44, p. 23.

† Report of Boundary Com., House of Commons, Can., 1880, p. 209.

‡ Book of Arbitration Documents, pp. 17, 388, 402, 411-419, etc.

apparent by the registers of the Executive Council, by which we find that a Commissioner was appointed to obtain the surrender of the claims of the Indians to the lands in the vicinity of Lakes Superior and Huron, or of such of them as may be required for mining purposes. The Commissioner executed a treaty by which he obtained a portion of the very territory that would be cut off from the Province of Ontario, if the dispositions of the Act of 1774 were literally observed; 'from the Batchewanoning Bay to Pigeon River, at the western extremity of the said lake (Superior), and inland to that extent to the height of land which separates the territory covered by the charter of the Honourable the Hudson's Bay Company from the said tract, and also the islands in the said lake within the boundaries of the British possessions therein.' There are doubtless other Acts of authority beyond the meridian indicated in the foregoing report. In the De Reinhardt trial, Mr. Coltman, a Magistrate for the District of Quebec, and a Commissioner in the Indian Territory, in his evidence, said:—'Il est notoire que les writs des magistrates du district ouest du Haut Canada sont émanés pour être exécutés à Fort William.' It would, therefore, seem that in fairness to the Province of Ontario the old line of the height of land should be adopted as the western as well as the northern boundary of the Province of Ontario."

The Federal Parliament was in session at the date of this report, and was prorogued on the 18th of August following. Parliament again met on the 23rd October, and was prorogued on the 7th November, a change of Government having in the meantime taken place. A general election was held in January, 1874, and Parliament again assembled on 26th March, and was in session until 26th May. During these occurrences the negotiations between the Dominion Government and the Government of Ontario made no material progress.

On the 26th of June, 1874, a provisional arrangement was made for the sale of lands in the disputed territory, by the adoption of a conventional boundary on the west and north.* It was agreed, that this conventional boundary should, on the west, be the meridian line passing through the most easterly point of Hunter's Island, run south until it should meet the boundary line between the United States and Canada, and north until it should intersect the 51st parallel of latitude; and that the 51st parallel of latitude should be the conventional boundary of the Province on the north; that until the true boundaries should be ascertained, all patents for lands in the disputed territory to the east and south of these conventional boundaries should be issued by the Government of Ontario; and all patents for lands on the west or north of these conventional boundaries should be issued by the Dominion Government; that when the true west and north boundaries of Ontario should be definitely adjusted, each of the respective Governments should confirm and ratify such patents as might be issued by the other for lands then ascertained not to be within the territory of the Government which granted them; that each of the respective Governments should also account for the proceeds of such lands as the true boundaries, when determined, might show to belong of right to the other; that the Government of the Dominion should transfer to the Government of the Province all applications for lands lying to the east and south of the conventional boundaries, and also all deposits paid on the same; that the Ontario Government should transfer to the Dominion Government all applications for lands lying to the west or north of the same boundaries, and likewise all deposits paid thereon; that such of the said applications as are *bona fide* and in proper form should be dealt with finally according to the priority of the original filing; and that where applications for the same lands have been filed in the Departments of both Governments, the priority should be reckoned as if all had been filed in one and the same office. The westerly provisional line thus agreed upon is in longitude about 91°.

This arrangement continued in force until the award was made. Since the making of the award this Government has refrained from making any grants of land in the disputed territory. It is said that the Dominion has taken a different course, and has

* Book of Arbitration Documents, p. 347.

made grants, or promises of grants, on which parties have acted. This Government has repeatedly and courteously, but vainly, asked the Federal Government for information, and there seems no conceivable reason for not giving it, unless such grants or promises have been made and there is a desire to keep back the facts as long as possible from the Government and people of this Province. The despatches from this Government requesting the information are mentioned hereinafter.

On the 12th of November, 1874, the Government of the Dominion, by Order in Council, consented to concur in a proposition theretofore made by the Government of Ontario, to determine the northerly and westerly boundaries of the Province by means of a reference to arbitrators. Information was from time to time given to Parliament by the Government of Canada, and to the Ontario Legislature by the Government of the Province, with respect to the progress of the arrangements for this reference. In May, 1878, the Parliament of Canada granted \$15,000 to defray the expenses of the Ontario Boundary Commission, meaning thereby the said reference.

From the year 1874 both Governments occupied themselves in making an exhaustive collection of all the documents, facts and evidence bearing upon the controversy, including all that had been relied on upon either side in past discussions. All were printed for the purpose of the arbitration, and in a form which facilitated to the greatest practicable degree the full and prompt examination of the questions at issue.* Cases also were prepared on both sides, containing a summary of the respective claims and the reasons therefor; and these cases likewise were printed.

On the 31st July, 1878, formal Orders in Council† were passed, embodying and giving effect to arrangements theretofore made in regard to the arbitration. By an Order of the Privy Council, approved by His Excellency the Governor-General on the said day, after reciting in effect that under previous Orders in Council the subject of the northern and western boundaries of the Province of Ontario had been referred to the Hon. Wm. B. Richards, then Chief Justice of Ontario, and named as referee on behalf of that Province; that that gentleman having subsequently resigned as arbitrator, the Hon. R. A. Harrison, who had been appointed by His Excellency the Governor-General to succeed him in the Chief Justiceship, was appointed by this Government as arbitrator in his place; that Sir Francis Hincks had been named on behalf of the Dominion as another arbitrator; and that subsequently to the action taken under Order in Council of 12th November, 1874, it had been mutually agreed between the two Governments of the Dominion and Ontario that the Right Honourable Sir Edward Thornton, Her Majesty's Ambassador at Washington, should be selected as third referee; such selection was by this Order of the 31st July, 1878, confirmed; and it was declared that the determination of the three referees should be final and conclusive upon the limits to be and taken as and for each boundary respectively. An Order in Council of the same date, and to the same effect, was passed in this Province and approved of by His Honour the Lieutenant-Governor of the Province.

Counsel for the two Governments having been heard by the arbitrators, the arbitrators, on the 3rd August, 1878, delivered their award,‡ wherein they determined and decided what "are and shall be the northerly and westerly boundaries" of the Province.

The award so made negatived the claim of the Federal Government to confine our westerly boundary to the meridian of the junction of the Ohio and Mississippi, and our northerly boundary to the Height of Land already mentioned; but the award confined the westerly and northerly parts of the Province to limits narrower than had theretofore

* See Book of Arbitration Documents, pp. 1-448; Report of Boundary Commission, Jour. House of Commons, Canada, 1880, pp. 237-301.

† Sessional Papers, Ontario, 1879, No. 42.

‡ Report of Boundary Committee, House of Commons, Can., 1880, p. 480.

been claimed for them, determining the same to be in effect as follows: Our westerly boundary was declared to extend to the most north-westerly angle of the Lake of the Woods; and our northerly boundary was declared to be a line therein described, and extending from a specified point on the southern shore of James' Bay to Albany River; thence up the middle of Albany River and of the lakes thereon; thence to English River; and through that middle of that river to a point where the line would be intersected by a true meridian line drawn northerly from the most north-westerly angle of the Lake of the Woods. The most north-westerly angle of this lake is in longitude $95^{\circ} 14' 38''$ W.

That the territory of Ontario *on the west* extended at least as far as the award thus assigned to the Province, was demonstrated by a mass of evidence which there appears no danger of ever seeing overcome. The only point upon which there could be a reasonable doubt was, whether our true boundary was not still farther west; and if so, how much farther west. The reason of the doubt may be shortly explained.

By the Act of 1774 (14 Geo. III, c. 83, and commonly called the Quebec Act)—as interpreted by its history and known objects, by the surrounding circumstances, by the Royal Commissions issued thereunder shortly afterwards, and by the contemporaneous official and unofficial expositions of the Act—the Province was to extend, on the west, to the banks of the Mississippi River “to its source.”* Subsequently, viz., in 1783, the southerly part of this territory was ceded to the United States, that is, to a line through the middle of Lakes Ontario, Erie and Huron; thence through Lake Superior, Long Lake, and the Lake of the Woods, to the “most north-western point thereof; and from thence on a due west course to the River Mississippi.”† The arbitrators having given to Ontario a boundary no farther west than “the most north-western point of the Lake of the Woods,” the boundary so given is clearly not beyond the true limit. But the line was to go from that point “on a due west course to the River Mississippi.” There is no river now called the Mississippi which this due west line would intersect; but there are tributaries west of Manitoba which such a line would touch, the first of them being the White Earth River, the waters of which flow into the River Missouri, a branch of the Mississippi. The White Earth River, or some other stream falling into the Missouri, and thence into the Mississippi, might very well have been held to be the Mississippi referred to in the Act of 1774, in the Treaty of 1783, and in the Royal Commission issued afterwards (22nd April, 1786,) to Sir Guy Carleton as Governor-General. But, as between Great Britain and the United States, by the joint effect of the subsequent treaties of 1794, 1814, 1818 and 1842,‡ the source of the Mississippi was in effect taken to be, as between the United States and the British possessions, in Turtle Lake, at a point south of the most north-western point of the Lake of the Woods and in nearly the same longitude; and it was agreed that the boundary (in that direction) between the United States and the British possessions should be a line drawn due south from this point to the 49th parallel of north latitude, and along that parallel to the Rocky Mountains. Manitoba, lying east of the White Earth River, was set apart by the Federal Parliament as a separate Province, without protest from the then Government or Legislature of Ontario. The Arbitrators have confined the western boundary of Ontario to the meridian of the north-western point of the Lake of the Woods; thus deciding in favour of a westerly line the least favourable to Ontario that on the facts and evidence was possible.

With respect to the *northern* side of the Province, the claim of Canada up to 1870 had been that, either our only limit north was “a few isolated posts on the shore of Hudson's Bay,” or that “Canada has no particular limit in that direction,” and extends to the Arctic Ocean.§ But writers on the subject have always felt more or less difficulty in saying where exactly, to the north of the Height of Land, the true northerly boundary could be said to be, there being less that is definite to determine it than in the case of

* Book Arb. Docs., 3, 18, 27, 43-56, 135-140, 235-273, 299, 322, 323, 376, 384, 388-391, 402, 409-419, etc.

† Book Arb. Docs., p. 19.

‡ *Ibid.*, pp. 20, 21.

§ Sess. Papers, Can., 1857, Vol. 15, No. 17.

the western boundary up to the limit assigned to us there by the award. The question as to the northern boundary is of less consequence to either party than the question of the western boundary, the territory on the north being of considerably less value than the territory on the west ; and the Government of Ontario had, in 1872 (19th April),* intimated that they would consider any proposal which might be made by the Federal Government for the establishment of a conventional line to the north, provided that the latter would agree to its being somewhere north of the watershed of the St. Lawrence system. In assigning to the Province the territory as far as James' Bay, the Arbitrators followed the Act of 1791, the Order in Council and Proclamation of the same year, and several Royal Commissions ; and if the claim, made by Canada on our behalf and its own before 1870, and by Ontario for itself afterwards, to the whole region of Hudson's Bay, was too extensive, and if there is any ground for maintaining a less favourable limit to the Province on the east side of the northerly boundary than the Arbitrators awarded, there is strong reason for maintaining a much more favourable limit on the western side of the same boundary assigned to us—a limit which would include within Ontario a larger though less conveniently shaped area of territory on the north than has been assigned to us by the award.

Under all the circumstances, Ontario accepted the award, not because it assigned to the Province all that was claimed on its behalf, or all that the Province might within its strict legal rights have had awarded to it, but because the tribunal appointed jointly by the two Governments to decide the matter was one to whose competency and character no one could take exception ; and because, according to the judgment of the people of Ontario, neither party to the arbitration could, consistently with good faith, refuse to abide by the decision.

A technical objection has been made to the award, by some of its Federal assailants, that, instead of finding "the true boundaries," the Arbitrators had declared a "conventional or convenient boundary." Sir Francis Hincks, in a lecture on the arbitration, delivered by him by request on the 6th May, 1881, shewed how unfounded in fact this objection is:—

"The duty of the Arbitrators was to find the true boundaries of Ontario, and they are charged with declaring 'a mere conventional or convenient boundary.' Now, for my present purpose, I shall refer merely to those pretensions which specially engaged the consideration of the Arbitrators as affecting the south-western boundary. On the claim under the Proclamation of 1791, which the Arbitrators held to be valid, notwithstanding the able arguments of counsel, of the Hon. Mr. Mills and others, including the Messrs. Dawson, one of whom, the Chairman of the Committee of 1880, fixed the boundary at the White Earth River, 450 miles west of the Lake of the Woods, they concurred in the judgment of the Quebec Court in 1818 that no territory could be awarded to Ontario that was not comprised in the old Province of Quebec as created by the Act of 1774, modified by the Treaty of 1783 with the United States, and by subsequent treaties. They entirely rejected the Dominion claim to a boundary on what is known as the due north line, and having no doubt whatever that the Mississippi River was the western boundary of the old Province of Quebec by the Act of 1774, and that by the Treaty of 1783 the south-western boundary must be either at the international boundary at the north-western angle of the Lake of the Woods, or still farther west, they decided in favour of that boundary which they were clearly of opinion Ontario was entitled to. On the north-east they were clearly of opinion that the Height of Land boundary could not be sustained, and that the true point of departure was the point on James' Bay due north from the head of Lake Temiscamingue.

"The sole ground for the charge that they adopted a conventional or convenient boundary is, that the line connecting the north-eastern and south-western boundaries was adopted for the sake of convenience. The Arbitrators were guided in their decision solely by Acts of Parliament, Proclamations authorized by Orders in Council on the authority of Acts of Parliament, and international Treaties. They found in the Proclamation of

* Sess. Papers, Ont., 1873, No. 44, p. 18 ; Book Arb. Docs., p. 343.

1791, that after reaching James' Bay, the description proceeded thus : ' including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.' If the critics of the award believe such language susceptible of the construction that it lays down a precise spot on the north-west as a boundary, then their charge might have some foundation ; but the fact is that the language would have justified the Arbitrators in extending the boundaries of Ontario very considerably. They were strongly urged by Col. Dennis, one of the permanent staff of the Department of the Interior, after their decision as to the south-westerly and north-easterly boundaries became known, to connect the two points by a natural boundary, and being aware of the fact that the Albany River had been formerly suggested by the Hudson's Bay Company as a satisfactory southern boundary, they adopted it. It is not a little singular that the award was promptly accepted by Ontario, although the only questions of doubt were decided in favour of the Dominion. Both on the west and north the doubts were whether Ontario should not have had more territory. * * *

" The objection made to the award of the Arbitrators is, that they did not find the true boundaries, but adopted a convenient boundary. I need not repeat my refutation of this allegation ; but even on the assumption that it had any force, it would not apply to the western boundary, regarding which the Arbitrators were clearly of opinion that the international boundary at the north-western angle of the Lake of the Woods was the true point of departure. The northern boundary, owing to the vagueness of the language employed in the Proclamation issued under the Act of 1791, is more open to doubt. * * * The western boundary is not only the most important, but the least open to doubt, as I think I have already clearly demonstrated. I will only add, in conclusion, that the Arbitrators were of opinion that, having reference to all the facts of the case, the boundaries set forth in the award were supported to a larger extent than any other line by these facts, and by the considerations and reasons which should and would guide and govern the determination of the questions by any competent legal or other tribunal."

In a despatch dated 31st December, 1878, from this Government to the Secretary of State for Canada, it was stated that during the approaching session of the Legislature a measure would be introduced " to give effect, by way of declaratory enactment, or otherwise, to the award made by the Arbitrators to determine the northerly and westerly boundaries of the Province of Ontario ;" * and His Honour, in the same despatch, also stated that he would be glad to learn that such legislation as might be necessary to give effect to the award would be had at Ottawa in the next session of the Parliament of Canada. By this despatch, the Government of Canada was respectfully reminded that the territory which was in dispute before the award was made extends on the westerly side of Ontario from a line drawn due north from the confluence of the Ohio and Mississippi, to (say) the Rocky Mountains, and extends on the northerly side from (say) the Height of Land to the most northerly limit of Canada ; that the award assigned part of this territory to the Dominion and part to Ontario ; that the administration of justice would continue to be surrounded with difficulties and uncertainties, especially in the matter of jurisdiction, until the award should be confirmed by express legislation at Ottawa and here ; that the subject assumed unusual importance in view of the construction of public works within the territory, and the consequent influx of an unsettled and migratory population ; that His Honour the Lieutenant-Governor would be glad to learn that such legislation as would be necessary to give effect to the award would be had at Ottawa at the next session of the Parliament of Canada ; and that the legislation should, it was respectfully submitted, be as nearly as possible simultaneous and identical. The despatch further stated that His Honour the Lieutenant-Governor would be glad to receive and consider any suggestions in connection with this object ; and also to receive, as soon as possible, the maps, field notes, etc., relative to so much of the territory assigned to Ontario as had been surveyed under the authority of the Dominion.

In a despatch, dated 8th January, 1879, the Government of Canada acknowledged the receipt of the despatch last mentioned, and stated that the same would not fail to

receive all due consideration. No intimation was given, in reply to His Honour's communication, that the Government of Canada would refuse to be bound by the award of the Arbitrators, or would not submit to the Parliament of Canada a measure recognizing the same or giving effect thereto;* nor did this Government receive the maps, field notes, etc., or any communication with respect to the request made therefor.

The Legislature of Ontario, by an Act of the Session of 1879,† consented that the boundaries of the Province, as determined by the said award, should be declared to be the northerly and westerly boundaries of the Province of Ontario.

By a further Act of the same session‡ the Legislature made provision for the administration of justice in the northerly and westerly parts of Ontario. This Act was the subject of subsequent correspondence between the two Governments, hereinafter set forth. The Ontario Legislature was prorogued on the 11th March; the Federal Parliament remained in session until the 15th May.

From the newspaper report of the proceedings of the House of Commons of 2nd May, 1879, it was found to have been stated in the House, on behalf of the Government of Canada, that the papers on the subject of the arbitration and award had been mislaid. No communication to this effect had been made to the Government of Ontario, nor any application for fresh copies; but in order that no time should be lost in introducing the legislation necessary to set at rest the question of the boundaries, this Government forwarded to the Secretary of State, at Ottawa, other copies of all the papers so stated to have been mislaid. Copies of such of them as were in print were forwarded also to every member of the Dominion Government personally.§ A despatch was on the same day sent to the Secretary of State, referring to these documents. No action, however, during the said session, was taken by the Government or Parliament of Canada with respect to the boundaries.

On the 23rd of September, 1879, a further despatch was addressed by this Government to the said Secretary of State,|| calling the attention of the Government of Canada to the despatch of 31st December previous, respecting the legislation needed to put beyond dispute, in civil and criminal cases, any question as to the western and northern limits of Ontario; pointing out that, an award having been made in pursuance of a reference by the two Governments, it was just that there should be no further delay in formally recognizing the award as having definitely settled the matters submitted to the Arbitrators; that the Government of Ontario did not doubt that the Government and Parliament of Canada would ultimately take the same view, but it was respectfully represented that the delay in announcing the acquiescence of the Dominion authorities, and in giving full effect otherwise to the award, had been embarrassing and injurious.

The despatch stated some of the leading evidences of the right of the Province to the territory awarded, but it was observed that "if it were less clear than it is, that the award does not give to Ontario more territory than the Province was entitled to, and if the reasons which justify the conclusions of the Arbitrators were far less strong and clear than they are, it is respectfully submitted that the award demands the active acquiescence and recognition of the parties to the reference. The question of boundaries was in controversy; it was referred by mutual consent to the distinguished gentlemen named; they have made their award, and the fact is conclusive in regard to all questions on the subject."

The Government of Canada was reminded that the settlement of the controversy, as well as the explorations for railway and other purposes, had drawn public attention to the territory north and west of Lake Superior; that settlement therein was proceeding;

* Sessional Papers, Ontario, 1879, Vol. 11, No. 80.

† 42 Vic., chap. 2, (Ontario.)

‡ *Ibid.*, chap. 19.

§ Sessional Papers, Ontario, 1880, No. 46.

|| *Ibid.*

that various enterprises were establishing themselves ; that speculation was likely to be directed to this region ; and that various causes were at work favourable to an influx of population, both of a settled and floating character ; that in view of these considerations, the Government of Ontario trusted that the Government of Canada would recognize the propriety of announcing without further delay their intention to submit to Parliament, next session, a Bill declaring the boundary established by the Arbitrators to be the true northerly and westerly boundaries of Ontario, and to use the influence of the Government to have the measure accepted by both Houses, and assented to by His Excellency the Governor-General. The request contained in a former despatch was renewed, "that the Government of Canada would be pleased at once to forward to this Government the maps, field notes, etc., etc., relative to so much of the territory assigned to Ontario as had been surveyed under the authority of the Dominion."

On the 25th September, 1879, the Under-Secretary of State acknowledged the receipt of this despatch, and stated that the subject would be submitted to His Excellency the Governor-General.* But from that day to this no intimation has been communicated to this Government that the subject had been submitted to His Excellency as then intended, or what the result was of its being submitted ; nor has any answer whatever been made to any of the statements of the despatch. The maps, field notes, etc., again asked for, were not sent ; nor was any explanation given or reason suggested for not sending them.

On the 14th February, 1880,† the Under-Secretary of State for Canada transmitted to this Government a copy of an Order of His Excellency the Governor-General in Council, 12th February, 1880, on the subject of the Act passed by the Legislature of this Province, at its previous session, providing for the administration of justice in the northerly and westerly parts of the Province. The Council concurred in an opinion which had been reported by the Minister of Justice, that the Act *seemed* "to encroach upon the powers of the Dominion Government with respect to the appointment of judges," and to go "far beyond any previous Act of a similar character, and should be disallowed, unless repealed within the time for disallowance." On the 17th February, a copy of the report of the Minister of Justice, on which the said Order in Council had proceeded, was transmitted to this Government.

Five days after this Order in Council, viz., on the 19th of February, 1880,‡ a strongly hostile Committee was appointed by the House of Commons, with the approval of the Federal Government, for the professed object of "enquiring into and reporting to the House upon all matters connected with the boundaries between the Province of Ontario, and the unorganized territories of the Dominion, with power to send for persons and papers."§ The Committee made a report to the House on the 5th May following. The evidence taken by the Committee consisted chiefly of the documents, papers, and proofs which had been before the Arbitrators, with a few further documents of no substantial value as additional evidence, and a mass of *ex parte* statements not under oath, most of which would be inadmissible before any court of justice, and all would be treated as immaterial if admitted. It may be observed here that Mr. Justice Armour, who before his elevation to the Bench had been counsel for the Dominion in the matter of the boundary, was questioned by the Committee as to his personal view regarding the boundary established by the Act of 1774, and gave his opinion against the westerly line now contended for the Dominion.|| The Committee, by a party vote, expressed the opinion that the award did not describe the true boundaries of Ontario, and that it included within this Province territory to which the Committee asserted that the Province was not entitled.¶

* Sessional Papers, Ontario, 1880, No. 46.

† Sessional Papers, Ontario, 1881, No. 30, p. 9.

‡ Journal, House of Commons, 1880, p. 36 ; Debates, 1880, pp. 59, 76, 80, 101.

§ Journals, House of Commons, Appendix, 1880, No. 1.

|| Report of the Boundary Commission, House of Commons, Canada, 1880, p. 140.

¶ *Ibid.*, p. xxvi.

- The Governments of Canada, up to 1870, had thought, and, so far as known, invariably asserted, otherwise.

This Government took no part, directly or indirectly, in the proceedings before this Committee, nor were they invited to do so.

Meanwhile, on the 3rd March, 1880, the Legislative Assembly of this Province, by a majority of sixty-four to one, passed resolutions, in part to the following effect :

“That this House regrets that, notwithstanding the joint and concurrent action of the respective Governments in the premises, and the unanimous award of the Arbitrators, the Government of Canada has hitherto failed to recognize the validity of the said award, and that no legislation has been submitted to Parliament by the Government of Canada, for the purpose of confirming the said award.”

“That, nevertheless, it is, in the opinion of this House, the duty of the Government of Ontario to take such steps as may be necessary to provide for the due administration of justice in the northerly and westerly parts of Ontario, and that this House believes it to be of the highest importance to the interests of this Province, and to the securing of the peace, order and good government of the said northerly and westerly parts of Ontario, that the rights of this Province, as determined and declared by the award of the Arbitrators appointed by the concurrent agreement and action of the Governments of Canada and Ontario, should be firmly maintained.”

“That this House will at all times give its cordial support to the assertion by the Government of Ontario of the just claims and rights of this Province, and to all necessary or proper measures to vindicate such just claims and rights, and to sustain the award of the Arbitrators, by which the northerly and westerly boundaries of this Province have been determined.”

The Session of the Ontario Legislature being then near its close, and the proceedings of the Federal Government affording reason to apprehend that the Provincial Act of the previous session, making provision for the administration of justice in the northerly and westerly parts of Ontario, might be disallowed, it was necessary that such provision should be made for the administration of justice in the remote territories of the Province as, under the circumstances, might be practicable—the same to take effect in the event of the former Act being disallowed. Accordingly, the Legislature passed a new Act* (5th March, 1880), entitled “An Act respecting the Administration of Justice in the Districts of Algoma, Thunder Bay and Nipissing.” By this Act two additional stipendiary magistrates, appointed under the former Act for the Districts of Thunder Bay and Nipissing, were continued ; their jurisdiction, as regards subject matter and amount, was confined to the limits provided for by the law which was in force in Upper Canada before Confederation ; and, to guard against any pretext for the disallowance of the Act, the Act avoided any disputable reference to the extent of the territory within which the Act was to operate, leaving that question to be determined as might be by the Law and the Right. This Act has not been disallowed.

With reference to the former Act on the same subject, which the Dominion Government had intimated an intention to disallow, the undersigned, on the 15th March, 1880, had the honour to submit a report,† which was approved of by your Honour in Council on that day. In this report the undersigned took occasion to observe that it was a matter of profound disappointment that, after the exhaustive investigation which the question of our northerly and westerly boundaries had received, and the unanimous decision, eighteen months before, by the distinguished and able gentlemen selected as Arbitrators, the Government of the Dominion was not yet prepared to abide by the award, or to recognize the just rights of the Province which the award established.

The report further showed, that the Act which that Government proposed to disallow was not objectionable on any of the grounds urged against it ; and that the disallowance was not necessary, and would not, under all the circumstances, be a proper exercise of Dominion authority. The report stated, that the despatch had been received when the recent Session of the Legislature was far advanced ; that it appeared necessary, therefore,

* Journals of the Legislative Assembly of Ontario, 1880, pp. 131, 141, 165. 43 Vic., c. 12, Ont.

† Sessional Papers, Ontario, 1881, No. 30, p. 11.

to provide at once for the contingency of the disallowance, it being assumed that the Dominion Government, in common with the Province, felt and would recognize the propriety of some provision being made for the administration of justice in the still disputed territory, instead of its being left to utter lawlessness and anarchy; that a new Act had accordingly been passed, which was not to go into effect unless and until the former Act should be disallowed; that the new Act confined the jurisdiction of the stipendiary magistrates, as regards subject matter and amount, to the limits provided for by the law in force before Confederation (the extension of their jurisdiction in these respects having been one of the objections made to the former Act), and that the new Act had avoided any disputable reference to the extent of the territory within which the Act was to operate, leaving that question to be determined as might be by the Law and the Right. The report contained the following further observations:—

“As the territory in dispute is included in the territory which the Province of Canada, before Confederation, claimed as part of Canada, and therefore of Canada West, or Upper Canada; and in the territory to which the Dominion, through its ministers, after Confederation, and until the purchase from the Hudson's Bay Company, made the same claim, and on the same grounds; and which territory the Province of Ontario continued afterwards to claim; and as the territory, still it seems in dispute, was, eighteen months ago, solemnly awarded to the Province as its rightful property, by the unanimous decision of three Arbitrators of the highest character and competency, who had been mutually chosen by the two Governments—it is obvious that the *prima facie* right to the territory, if not (as we insist) the certain and absolute right, is, and must be taken to be, in Ontario; and it is the consequent obvious duty of the Province to make such reasonable provision as may be practicable for the administration of justice among the population of the territory. The dispute or delay on the part of the Dominion with respect to the award causes uncertainty, and its daily increasing and grave evils, in connection with the administration of justice; and if the dispute or delay is to continue, the undersigned is respectfully of opinion that the evils referred to, which all must regret, will be intensified by the disallowance of the provisional legislation, and that their removal, or partial removal, calls rather for provisional legislation by the Dominion (without prejudice to the matter in dispute), expressly giving to the laws of Ontario, and its officers, authority in the territory, pending the dispute by the Dominion, or pending the settlement and recognition of the true boundaries.”*

A copy of the report, and of the Order in Council concurring therein, was transmitted by your Honour to the Secretary of State at Ottawa, on the 15th March, 1880.

On the 17th of the same month, † the Federal Minister of Justice made his further report, admitting, in view of the observations of the undersigned, that part of the former Act was not open to the objections which the Minister had previously urged against it, but affirming that the objections to other portions, which referred to the stipendiary magistrates and to the Courts presided over by them, still remained; and he advised the disallowance of the Act. The Minister, in this report, observed that it was unnecessary to reply to the arguments adduced by the undersigned with respect to the boundaries of Ontario, as any discussion of this kind would, he observed, seem to be inopportune. The Government of Canada has not hitherto found any occasion when such a discussion with this Government did not seem to be inopportune. On the 22nd March, 1880, the Act in question was disallowed.

On the 19th of April, 1880, the Committee of the House of Commons not having yet made any report, an Order was passed by His Excellency the Governor-General in Council, ‡ under the authority of the Act of the Dominion Parliament, 39 Vic., c. 21, by which Order it was declared that a certain building in or near Rat Portage was in the District of Keewatin, and the Order purported to establish and declare this building to be a common gaol for the District of Keewatin, and authorized and empowered the

* Sessional Papers, Ontario, 1881, No. 30, p. 10.

† Sessional Papers, Ontario, 1881, No. 30, p. 15.

‡ Prefixed to the Dominion Statutes, 1880, p. lxxxii.

Commissioner of Police for the District of Keewatin to appoint a gaoler, or keeper, of the gaol, and such other officials for the purposes thereof as might be thought necessary. This building is within the territory awarded to this Province. The Government of the Dominion, however, by the Order in Council referred to, chose to assume that the territory in question was not within Ontario, and provided for the administration in the said territory of other laws—namely, the laws of the District of Keewatin. No communication of this Order in Council was made to this Government.

On the 28th May, 1880, an Order in Council, approved by His Honour the Lieutenant-Governor, was passed, providing that that part of the Territorial District of Thunder Bay west of the meridian of the most easterly point of Hunter's Island, formerly known as the provisional boundary line, should be divided into two Division Court divisions, therein described; the object of the said Order being, that one Division Court should be held at Rat Portage, and the other at Fort Frances, in the territory in question. The population of Rat Portage is said to number about 700, about half of that number being residents of the locality. The establishment of a Court there by this Province had been applied for by the inhabitants.

During the Session of the Federal Parliament, in 1880, the undersigned endeavoured to induce the Dominion Government to concur in some steps for the due administration of justice in the disputed territory; and, as that Government was not yet prepared to concede our right to the territory, the undersigned transmitted to the Minister of Justice, the draft of a Bill, embodying certain provisions, which it seemed necessary or desirable that the Parliament of Canada should pass for the government of the territory in the meantime. In these endeavours the undersigned was only partially successful. Thus in a communication addressed 23rd April, 1880,* to the Minister of Justice, the undersigned pointed out that the Supreme Court had decided that the Parliament of the Dominion had power to pass a prohibitory liquor law; that it was of special importance that no intoxicating liquors should be sold along the line of the Pacific Railway; that the claim of the Federal Government to the territory up to the meridian of the confluence of the Ohio and Mississippi, implied a claim that the Keewatin law as to intoxicants extends to that meridian; but as, by the decision of the Supreme Court, the Federal Parliament had power to make that law (or a similar law) applicable, whether the claim of the Dominion to the territory was well founded or not, the undersigned suggested an enactment declaring in express terms that the Act, or such modification of it as the Minister might prefer, should have effect whether the territory was within Ontario or Keewatin. The communication proceeded as follows:—"If you do not consider it advisable that a prohibitory law should be in force so far east, then, to avoid clashing, I suggest that Parliament confer on the License Commissioners of Ontario for Thunder Bay the right to issue licenses in so much of the disputed territory as is not to be covered by the prohibition.

"In regard to civil matters, to assume or declare that the Keewatin law as to civic procedure shall be in force in any part of the disputed territory would put it in the power of any suitor to raise the boundary question; as, if our claim of boundary is correct, such an enactment would be *ultra vires*. I think, therefore, that for the determination of Civil rights, you will find it the convenient, and indeed only practicable course, to confirm, in reference to the disputed territory, the jurisdiction of our stipendiary magistrate,† and to provide that matters beyond his jurisdiction shall be determined in the District Court of Algoma, where the cause of action is within the jurisdiction of that Court.‡ Where the matter is beyond the jurisdiction of the District Court of Algoma, authority to try in any Superior Court of Ontario, and in any county, should be given."

None of these suggestions were acted upon; nor was any communication made to the undersigned or to the Government of Ontario with respect to them. An Act was passed by the Federal Parliament (7th May, 1880),§ making some provision with respect

* Sessional Papers, Ontario, 1881, No. 30, p. 17.

† See 43 Vic., cap. 12, sec. 3.

‡ *Id.*, sec. 5.

§ 43 Vic., ch. 36, Dom., p. 253.

to the administration of justice in criminal cases in the disputed territory, but making no provision in regard to civil matters, or to the other important subjects mentioned ; nor has any provision in respect of them been made since ; nor has any proposition been made to this Government for concurrent or other legislation of any kind, with a view to meeting any of the necessities of the case.

In your Honour's Speech at the opening of the session of the Provincial Legislature on the 13th January, 1881,* your Honour was pleased to observe, that it was much to be regretted that the Dominion Government had taken no step to obtain, and had hitherto shown no intention of seeking to obtain, from the Parliament of Canada, legislation confirming the award, though made two years before by three most distinguished Arbitrators chosen by the two Governments, and who had before them all the evidence obtainable from the most diligent researches both in America and Europe, or brought to light during the many discussions bearing on the subject which had taken place during the last century. Your Honour was pleased further to say, that the result of the inaction of the Dominion Government in this respect was to defer the settlement and organization of a large extent of country ; to deprive the inhabitants of that district of those safeguards of peace and order which they, in common with all others, are entitled to enjoy ; and to withhold from the people of Ontario the benefits which the possession of that territory would afford.

The House of Assembly, in their Address † in answer to your Honour's Speech, expressed their concurrence in what had thus been said by your Honour.

On the 1st February, 1881, the undersigned addressed to the Minister of Justice a communication expressing his hope that the then session of the Dominion Parliament would not be allowed to come to an end without the necessary Act being passed adopting and confirming the boundary award ; that if in this we were again to be disappointed, some additional legislation was absolutely required to mitigate the serious evils consequent upon the unhappy position in which the territory in question was placed ; that no magistrate or justice of the peace acting in the disputed territory could feel any assurance that his jurisdiction would not be disputed, and his officers set at defiance or sued in trespass ; that the doubts which the inhabitants must have as to their position, in view of the delay of the Dominion Parliament to confirm the award, necessarily paralyzed the administration of justice in the territory ; that the Dominion Act of the previous session (43 Vic., cap. 36) did not declare what law should govern in the case of civil rights, and made no provision as to the trial of civil matters ; nor did it set at rest the very important question as to whether the License Law of Ontario, or the Prohibitory Law of Keewatin, governs in this territory ; that in the letter of the undersigned of the 23rd April previous, he had suggested that Parliament should be requested to make some provision in respect of these matters ; that he had also suggested that authority should be given alike to the justices of the peace of Keewatin and of Thunder Bay and Algoma to act in any part of the disputed territory ; and that the jurisdiction of the District Court of the District of Algoma, and of the Divisional Courts established for Thunder Bay, and of the judges and officers of such courts, including the sheriff of Thunder Bay, should have authority and jurisdiction within this territory ; that the Draft Bill which the undersigned had submitted during the previous session, under the hope that the Minister would introduce it into Parliament, dealt with these matters ; that they seemed to the undersigned far more important for the due administration of justice than those provisions of the Draft Bill which the Act, as passed, had included ; that, in fact, the provisions of the Act, as passed, to be operative to any great extent, required the aid of some of the omitted provisions ; that the undersigned did not see what valid objection could be urged against the introduction of the omitted provisions ; that the fact of reciprocal rights being given to the officers of Keewatin and of Ontario would clearly show that the Parliament of Canada were not by this legislation admitting the right of Ontario ; and that, on account of the omission of the provision (which the undersigned had suggested) giving to the sheriff of Thunder Bay authority in this territory, it had been found necessary at very heavy expense to bring the prisoner Horn, who was accused of murder, down to Sault

* Journals, Legislative Assembly, Ontario, 1881, p. 2.

† *Ib.*, p. 9.

Ste. Marie for trial. The undersigned reminded the Minister of Justice that the Act of the previous session would expire upon the rising of Parliament.

The undersigned expressed his trust also, that authority would be given to the Ontario Government to deal with the land and timber in the disputed territory, subject to our accounting therefor in case our right to the territory should not be maintained. He pointed out that, though the Parliament of Canada had not yet recognized the award, yet the award certainly gave to Ontario, meantime, such a *prima facie* interest as made it most reasonable that the Province should have the necessary means of giving titles to settlers within the territory, so long as what might be deemed the possible rights of the Dominion were duly protected.

The Minister of Justice replied on the 7th February, 1881, acknowledging the receipt of the communication and accompanying papers, and stating that the same would receive his best consideration. But no further communication whatever was made to the undersigned, or to the Provincial Government, on the subjects referred to, and nothing was done to remove or alleviate any of the clamant evils which the undersigned had pointed out. Nor did the Federal Government submit to Parliament during this session any measure recognizing or giving effect to the award.

On the 3rd March, 1881, the Legislative Assembly of the Province passed resolutions, by a majority of 75 to 1,* declaring (amongst other things) as follows:

"That this House deeply regrets that, notwithstanding the unanimous award made on the 3rd August, 1878, by the Arbitrators appointed by the joint and concurrent action of the Government of Canada and the Government of Ontario to determine the northerly and westerly boundaries of Ontario, no legislation had been submitted by the Government of Canada to the Dominion Parliament for the purpose of confirming that award; nor has the validity of the award yet been recognized by the Government of Canada.

"That the omission of the Government and Parliament of Canada to confirm the award is attended with grave inconvenience, has the effect of retarding settlement and municipal organization, embarrasses the administration of the laws, and interferes with the preservation of the peace, the maintenance of order, and the establishment of good government in the northerly and north-westerly parts of the Province of Ontario.

"That it is the duty of the Government of Ontario to assert and maintain the just claims and rights of the Province of Ontario, as determined by the award of the Arbitrators; and this House hereby re-affirms its determination to give its cordial support to the Government of Ontario in any steps it may be necessary to take to sustain the award, and to assert and maintain the just claims and rights of the Province as thereby declared and determined."

On the 4th March, 1881, the Provincial Legislature was prorogued; and immediately afterwards, viz., on the 7th March, a Bill was introduced into the Senate by the Federal Government providing for the extension of the boundaries of Manitoba, in a way which further complicated the difficulties connected with the administration of justice in the territory, and with the settlement of its lands, and the development of its resources. This Bill was put through its several stages in great haste, and was passed (by the Senate) on the 11th March.†

Meanwhile, the stipendiary magistrate of this Province appointed to the said territory reported, 23rd February, 1881 (received at Toronto 5th March), that the explorers and miners on the Lake of the Woods were thrown into a state of despondency from the apprehension that the boundary question would not be settled at this session of Parliament. The communication proceeded to state further, as follows:—

"You can have but little conception of the difficulties and disappointment those people have met with here. They have expended all their money in exploring and in surveys, expecting an early return for their investment and toil, which they felt sure they would if the boundary question was settled, so that deeds could be procured for their locations. Without a title nothing can be done with mining capitalists, who require to have an undisputed title to the lands in which they risk their money.

* Journals, Legislative Assembly, Ontario, 1881, p. 150.

† Journals of Senate of Canada, pp. 195, 212, 215.

"The delay of another year in settling the question of the boundary will ruin many, and they will be driven from the locality never to return, causing loss to the merchants and others who have made advances with a fair prospect of an early return. The people of the locality are suffering in many ways from the unsettled condition of affairs. There is no civil court to collect debts, no land agent to locate settlers, no registry office to record deeds, no timber agent to protect the forest. There are timber locations to be had, but there is no security for the expense of exploring and surveying them. All is uncertainty and confusion. The mineral lands will be so mixed up before long, that the men who own locations will not be able to recognize their own property. Some places have been surveyed several times, and the surveys cover each other, and there is no doubt but there will be fighting, and perhaps murder, over those claims. Some persons are armed now to defend their rights against wealthier claimants.

"The water privileges here are of great value. There are several places near this place where the water can be let out of the Lake of the Woods with but little expense, and a fall of from sixteen to eighteen feet secured without any expense for a dam. There is scarcely any limit to the propelling power to be had here, and immediately on the line of the Canadian Pacific Railway. Trains can be run to the mill door without leaving the right of way. The privileges are being claimed and applied for by persons, for speculation, who have nothing; and the same confusion is likely to arise here that has taken place in the mines. If unworthy persons get those valuable privileges, who will do nothing with them themselves, and will only sell at exorbitant prices to those who wish to use them, it will be a great injury to the milling prospects here. They should be sold by the Government to persons who would erect mills within a specified time. The wheat crop of the great North-West can be ground at this point in transit to an eastern market, and Rat Portage would soon become a second Minneapolis. Its natural advantages are superior.

"The whiskey sellers are applying their illicit calling with great success, much to the injury of the district."

A copy of the material parts of this important communication was transmitted to the Dominion Government by the Provincial Secretary on the 8th March, 1881, but nothing was done to remove the evils to which the communication called attention, nor has any reference thereto been since made by that Government.

As soon as a copy of the Manitoba Bill had been received, your Honour, by the advice of your Council, addressed a despatch to the Dominion Government, stating that this Government had had their attention called to the Bill; that its terms, so far as regarded the easterly limit of Manitoba, were regarded by this Government with the greatest concern, and were considered as in the highest degree objectionable; that, so far as the territory to be comprised within the limits of the Province of Manitoba was indisputably within the jurisdiction of the Parliament of Canada, your Government rejoiced at the extension of that Province, as affording a wider scope for the energies of its people and Government, and as giving to a large number of settlers in Keewatin and the North-West Territories the direct benefits of Provincial and Municipal government. Your Honour proceeded to observe as follows:—"But, while the extension of the boundaries in directions as to which there is no dispute is a matter of congratulation, the terms in which the new eastern boundary of the Province is described in the Bill appear to my Government to call for an earnest and vigorous protest on behalf of the Province of Ontario.

"According to the provisions of the Bill, the eastern boundary of Manitoba is to be the western boundary of the Province of Ontario, wherever that boundary may hereafter be determined to be, though a very large part of our territory in that direction is still in dispute on the part of the Government at Ottawa, notwithstanding that more than two years ago it was found and declared to be ours by the unanimous award of the three distinguished gentlemen mutually chosen to determine the question.

"My Government desire to call the attention of the Government of the Dominion once more—(1) to the great and obvious injury occasioned to the interests of Ontario by the refusal or delay of the Dominion Government to recognize and confirm that award; (2) to the inconvenience and embarrassment, in an administrative sense, incidental to

the delay; and (3) to the fact that whilst the Government of the Dominion have failed to procure or propose the legislation necessary to the confirmation of the award, and have treated the rights of Ontario to the boundaries determined by the Arbitrators as being still open to question, they have not been pleased up to this moment to enter into any discussion of the subject with this Government, or even to make any official communication of the grounds on which a recognition of the award by which the matter in question was intended and supposed to be settled has been declined or delayed; and that the only answer which has been hitherto given to the repeated representations made on this subject has been that the communications would receive consideration.

"Under these circumstances, my Government can only regard this new step, of intruding a third party into the existing controversy, as an act of direct antagonism and hostility to the interests and rights of the Province of Ontario.

"Hitherto the assent of the Dominion of Canada to a settlement of the question has been necessary for that purpose, and would be sufficient. The Dominion has no constitutional interest in withholding that assent, and the people of Ontario have a voice in its councils. But, by the measure which has received its first reading in the House of Commons, it is proposed to give to another Province a new, direct, and strong interest adverse to that of the Province of Ontario, and to invite Manitoba, as a contiguous Province, with a growing and active population, to claim jurisdiction over every portion of the territory to which the Dominion of Canada has thought fit to question the right of Ontario.

"The proposed measure would also make the consent of the Province of Manitoba, as well as of the Government at Ottawa, to be hereafter essential to any settlement, or even to any step towards a settlement, of the existing controversy; and would place that Province in such a position, with reference to the territory, as may make almost, if not quite, impossible an amicable settlement of the question, or any settlement founded on the ground of the just obligation which an award made in good faith imposes on Nations, Dominions, or Provinces which, through their representatives, were parties to the arbitration.

"Serious and most vexatious difficulties cannot fail to arise from the conflicting interpretation of their rights in the premises by either of the three authorities claiming jurisdiction within an extended area of territory where it is of the utmost importance to peace and good order that the power of the law should be paramount and beyond question. In this view it has been repeatedly, and hitherto vainly, urged that if our right to the territory is not acknowledged, a provisional arrangement should be made with the sanction of Parliament in regard to the law which is to regulate the rights and obligations of the inhabitants with respect to civil rights and property, and kindred matters, until the question in dispute should be settled. In short, my Government look upon the proposed measure as calculated to aggravate all existing difficulties, and to prove most prejudicial to the harmony and accord which should prevail between the Provinces of the Dominion.

"Under all the circumstances, my Government desires respectfully to urge that, in fair dealing with the Province which they represent, the measure in progress should define the easterly boundary of the Province of Manitoba so as not for the present to extend in an easterly direction beyond the boundary of Ontario as determined by the Arbitrators, leaving the further extension of Manitoba eastward to be provided for by future legislation, should any competent authority decide that Ontario is entitled to less territory than by the award is declared to belong to this Province."

Your Honour further stated that, "The resolutions of the Legislative Assembly, passed by them in the session of 1880, and the resolutions passed in the session which has just terminated, and which received the unanimous support, with an individual exception, of the whole House, were sufficient to show that if the measure should be passed in its present form, it would be deemed by almost the whole people of Ontario as a violation of the rights of the Province, and as an act of gross injustice towards it.

"This Government trusted that, in view of the representations made, the Government of Canada might even yet see fit so to modify the measure then before Parliament as to deprive it of its objectionable features, while still conceding all necessary advantages

to the Province of Manitoba, in whose rapid progress and development" your Honour's despatch justly stated that "this Province, as a portion of the Dominion, felt profound satisfaction."

The receipt of this despatch was acknowledged on the 16th of March, 1881, but no answer was given to any of its statements or appeals, and no change was made in the Bill.

The transfer to Manitoba of the disputed territory was not contemplated by the first Act passed by the Manitoba Legislature (40 Vic., cap. 2, sec. 1; Revised Statutes of Manitoba, cap. 2, sec. 2), consenting to an extension of the boundaries of that Province by the Dominion Parliament, the extension thereby agreed to not including any part of the disputed territory. But this (it is presumed) not suiting the policy of the Federal Government, a special session of the Manitoba Legislature was convened, and a new Act obtained (4th of March, 1881), consenting that the new limits should include the whole of the disputed territory. Two reasons were suggested for accepting the territory, but having reference to the whole act it is apparent that neither of these reasons could have much real weight with the people of Manitoba. They are stated in a resolution passed by the Manitoba Assembly in this session :*—

"Resolved, That it is desirable that the boundaries of the Province should be extended eastwards, to correspond with the line marked as the west boundary of Ontario, near the eighty-ninth meridian of west longitude; that the requirements of the prairie portions of the Province could be supplied with the timber of the eastern portion; besides which, a port on Lake Superior would thereby be secured to the Province."

Under the Bill as introduced, and afterwards passed, the Crown Lands and Timber were not to belong to the Province of Manitoba. As the Premier explained: "By extending the boundaries of Manitoba, [the Bill] does not affect the proprietorship of the land. The land in the extended boundary belongs to the Dominion. . . . We cannot afford to give [the territory] to Ontario, if it belongs to the Dominion, because the lands would belong to Ontario. Keeping it as a portion of Manitoba, the lands belong to the Dominion."† This being so, it is manifest that "the requirements of the prairie portions of the Province" would be supplied with the timber equally well whether the jurisdiction over the territory should belong to one Government or the other.

As for "a port on Lake Superior," all the ports of the Dominion, in whatever Province situate, are open to the people of all the Provinces equally; the people of the Province in which such ports are situated having no advantage over others. It is also to be observed that Manitoba could only have a port on Lake Superior by annexing the territory east and south of the height of land, which was never claimed by the Hudson's Bay Company, and was until after Confederation an acknowledged part of Upper Canada.

That Manitoba could not have desired, and did not desire, the extension of its territory on the easterly side of that Province so as to include what was in dispute, is sufficiently apparent from what has been already said; and there are other facts which show the same thing. Manitoba is a comparatively new Province, having, by the census of the present year, a population of less than 50,000. Before the Act it had an area of 13,969 square miles. The Act gave additional undisputed territory to the extent of about 91,000 square miles. The enormous addition was all that for the present that Province could possibly need. The further addition of about 39,000 square miles of disputed territory, the land and timber of which the Federal authorities reserved to the Dominion, was a mere burden, and was no pecuniary or financial benefit to Manitoba. The whole annual revenue of that Province at this time did not much exceed \$100,000; and its necessary annual expenditure was such as to leave no margin for its new territory. On the other hand, Ontario had (its opponents must admit) at least a strong *prima facie* claim to the territory. Up to 1870 (as has already been shown) the Dominion Government itself had insisted on the claim as being clear; and subsequently it had been awarded to us by a competent and impartial tribunal. With respect to the organized part of the territory, the right of Ontario is so strong that (as the undersigned has already stated) the counsel of the Federal Government, Mr. Ramsay, had, in his official report to that

* Quoted in Debates of the House of Commons, 1881, p. 1450.

† Debates of the House of Commons, 1881, pp. 1450, 1456.

Government, pointed out that, though according to his argument the legal view was against us, yet equity and fairness required that Ontario should have the territory "to the height of land which forms the watershed of the water system of the St. Lawrence and the Great Lakes;" that "in creating the Province of Ontario, it is not possible to conceive that the Imperial Legislature intended to convey to that Province, and to the Province of Quebec, less territory than the late Province of Canada actually enjoyed; and that it was incontestable that up to 1867 the Government of Canada *de facto* extended to the height of land which forms the watershed of the water system of the St. Lawrence and the Great Lakes." The undersigned has also shown that, up to 1867, this part of the now disputed territory had been invariably dealt with as being an undisputed part of Upper Canada, and that since Confederation it has been dealt with as part of Ontario. If it formed no part of the Province of Upper Canada, or of Ontario, as is now contended, it follows that no man in it has any title to the land which he occupies; that all the acts of the courts and officers heretofore exercising jurisdiction have been illegal; and that all concerned in them are liable to actions for damages; as the Federal Ministers proclaimed in the debate on the Manitoba Bill. If this part of the territory is really in point of law not in Ontario, or if the question is doubtful, the just method of dealing with the subject was for the Federal Parliament to confirm the title of Ontario to this portion, whatever became of the rest, of the disputed territory, and to confirm all grants and governmental acts which want of title would or might otherwise invalidate, to the great injury of the population. But so far from this being done, the people of the locality were almost invited to resist the laws and courts to which they had always lived in peaceable subjection. "The people of Prince Arthur's Landing," said the First Minister, "may resist the processes of law; they may say to the sheriff he is committing an illegality. A man may say to another who brings a suit against him, 'This is the process of an Ontario court, and Ontario laws do not extend here, because we are not part of that Province.' The same thing might happen with regard to every process of law and every title, whether the boundary is settled or not."

As to the remainder of the disputed territory, this Province had, before the passing of the Manitoba Act, assumed the duty obligatory on its Legislature and Government, of administering justice and maintaining order in this part of the Province. If the territory is in Ontario, as the arbitrators declare it to be, and as our people justly believe that it is, and if the Province were not to establish courts and appoint magistrates and other officers in it, the territory would practically be without law or lawful authority, and peace and order therein would depend on illegal force.

It appears from the Journals of the Canada House of Commons, that during the debate on the Bill resolutions were moved in vain to the effect, that in the meantime the eastern boundary of Manitoba should not include the disputed territory; and that at all events the Act should "provide some definite eastern limit, beyond which Manitoba shall not be deemed to extend, pending the settlement of the western boundary of Ontario." A party majority defeated these motions, and the Act, with its objectionable provisions unchanged, was passed by the House of Commons on the 21st March, 1881.*

It was the duty of the Federal authorities to protect the just rights of all its Provinces; to render unnecessary interprovincial conflicts for the maintenance of such rights; to employ the constitutional powers of the Dominion Parliament and Government respectively in minimising the evils of a disputed boundary pending the dispute; and to take steps for determining such evils at the earliest possible date. Unhappily, the present Federal authorities have not chosen to discharge these manifest duties; and by this Act, two sets of Provisional laws were to distract settlers in both the organized and the unorganized parts of the territory; two sets of Provincial courts and officers were to be set in array against one another everywhere; it was to be impossible for anybody to obtain a sure title to any land or timber in the territory; squatters and trespassers were to be the only settlers; and legitimate authority was only to be maintained by a conflict between the people of two friendly Provinces and of the disputed territory, in which con-

* Stats. Can., 44 Vic., ch. 14.

flict Manitoba was, as against Ontario, to have the countenance and aid of the Federal authorities, with their contractors and armies of workmen. The former armed contests of trading companies for the possession of other portions of the territory were thus, at the instance and by the compulsion of Federal authority, to be renewed. Many lives were sacrificed in those old conflicts; more might be sacrificed in the new.

In the debate in the House of Commons, on the 18th of March,* the leader of the Government avowed as an object contemplated by transferring to Manitoba the interest of the Dominion in the disputed territory, that it would "compel" this Government not to insist on the awarded boundaries; and he assured the House that the Government of Ontario would "come to terms quickly enough when they find they must do so." No terms had ever been proposed to this Government, nor had this Government ever been asked to propose any to the Federal Government.

Afterwards, viz., on the 1st April, 1881 (the Committee of the House of Commons on the Boundaries not having yet reported), a petition, which appears to have been sent to the Dominion Government from Rat Portage, praying that a Court of Civil Jurisdiction might be established by the Dominion at that place, was replied to by the Under-Secretary of State, who stated in such reply, for the information of the petitioners, that as Rat Portage would shortly be included within the Province of Manitoba, when the Act extending the boundaries of that Province should be brought into force (unless it be already within the limits of Ontario), and as the administration of justice and the establishment of Provincial Courts devolved upon Provincial authorities, it would not be proper for the Government to take action upon their petition. The suggestion that the Province of Manitoba should or might establish a Court at Rat Portage, without waiting the determination of the right to the territory, was not communicated to this Government, nor did this Government come to the knowledge of the letter of the Under-Secretary until the month of June following, when a copy of it was obtained and sent to this Government by their officer at Rat Portage.

It is evident from this letter, as well as from the whole course of the Dominion Government in connection with the matter, that the intention was, that, in defiance of the rights of Ontario, the Province of Manitoba should at once assume jurisdiction in the disputed territory, establish Courts, appoint officers and magistrates therein, and thus enter into a conflict with Ontario, and thus bring about perhaps the withdrawal of the officers of Ontario, and our leaving the territory for an indefinite time in the control of Manitoba and the Dominion.

A further communication, dated April, 1881, was received from the same stipendiary magistrate, and extracts embracing its material parts were, on the 25th April, transmitted to the Secretary of State at Ottawa, with a request that he would be good enough to state, for the information of this Government, what the facts really were as to the matters therein mentioned as having occurred since the award, and since the determination of the provisional arrangements which had been theretofore made with reference to the territory in question.

On the 27th April, the receipt of the despatch of the Provincial Secretary was acknowledged, but the information asked for was not given, nor was any reason suggested for not giving the same; nor has the information been given since, or any reason stated for not giving it. The communication stated to the effect, that in the year 1873, certain persons, therein named, entered into possession of a timber limit, which they had previously obtained from the Dominion Government, containing one hundred square miles; that the limit was surveyed, comprising several blocks; that those blocks were marked on a map issued by the Dominion Government, and coloured yellow, and showed all the timber lands the parties were entitled to; that during the summer of 1880, the senior partner had an interview with Sir John Macdonald, and asserted that when his Company obtained their limit they were allowed the privilege of selecting the quantity in several blocks, those blocks not to contain less than twenty-five miles each; that another firm named in the communication had secured a limit on the Lake of the Woods and its tributaries,

* Debates of the House of Commons, 1881, p. 1452.

and had been allowed the privilege of selecting their limit in much smaller blocks ; that the firm first mentioned asked to be allowed to relinquish their claim to at least one-half of their limit, and to be allowed to select an equal quantity in blocks of any size, wherever they could be found, and would suit their Company best ; that their demands were assented to, accompanied with the remark that they had better get their limit arranged to suit themselves at once, as it might not be in the power of the Dominion Government to do them the favour in a short time hence ; that this firm had occupied their limit for several years, and cut timber sometimes on their limit and sometimes in other places outside of it, and had (it was said) paid no dues to the Government for the timber, with the exception of what was cut last season ; that during this time they discovered blocks more thickly timbered, of better quality and larger growth than the blocks originally selected and operated on by them, thereby obtaining an advantage not contemplated when they secured their limit, and securing a privilege not usually accorded to those enjoying timber limits ; that one of the partners (named) had made strong representations to the Dominion Government of injuries sustained by them when the water broke into the canal last summer, and had claimed that the water privilege at Fort Frances had been destroyed by the canal being cut where it is, and (it was said) had obtained a promise from the Government at Ottawa of one of the most valuable water privileges on the Lake of the Woods, at Rat Portage, in lieu of the pretended damage to the one at Fort Frances ; that all that was required to close the water out of the canal was a small dam across the mouth of the canal, which might cost from one to two hundred dollars, and then the privilege would be as good as it was formerly ; that the said firm had also represented that their milling operations were delayed by the water breaking into the canal, while the fact is they sawed double the quantity of lumber in the same time that they had in any previous season ; that it was also reported that a member of the House of Commons (named in the communication) had got a timber limit during the past year on the Winnipeg River, within the territory awarded to Ontario.

These were the statements made known to the Dominion Government, with the names of the parties referred to ; and, from that day to this, the people and Government of Ontario have had no information from the Federal Government on the subject.

It appears from another communication of the same officer, that he held his first Court at Rat Portage on the 16th May, 1881 ; that a number of cases were tried and disposed of ; that in some of them the money was paid by the judgment debtor before execution, and in others after execution ; and that no question of jurisdiction was raised by, or on behalf of, any of the persons sued except Manning, McDonald & Co., contractors with the Dominion Government for a portion of the Pacific Railway. A judgment was given against these contractors, execution was issued, and a seizure made by the bailiff ; that the bailiff was thereupon assaulted by an agent of the defendants ; that he was subsequently arrested by a Dominion constable, and without being brought before any magistrate was put into the gaol so established by order of His Excellency the Governor-General in Council ; that he was afterwards brought before the magistrate of the Dominion and fined one dollar or one day in gaol, and as he did not immediately pay the fine he was committed to gaol for performing his duty. Partly for want of a sufficient police force, and partly to avoid bloodshed, no further proceedings have been taken on the execution in his hands. It appears, also, that no new suits have been entered for the sittings of the Ontario Division Court at Rat Portage, on account of the question of jurisdiction having been raised by Messrs. Manning, McDonald & Co., as already mentioned, and of the process of the Court not having hitherto been enforced against them.

It is the opinion of the stipendiary magistrate that it will henceforward be impossible to enforce his judgments without the assistance of a considerable force, and that it is evidently the intention of the said contractors and others, henceforward to resist all process issued under the authority of this Province. The same course will no doubt be taken, whenever convenient, with reference to any process issued under the authority of the laws of Manitoba.

The Act which provided for the extension of the boundaries of the Province of Manitoba was to come into force on a day to be appointed by Proclamation by the Governor, to be published in the *Canada Gazette*. Such Proclamation was issued accordingly

on the 18th June, 1881, and declared the said Act to be in force on and from the 1st day of July, 1881.

By another communication from the stipendiary magistrate, dated 26th September, 1881, it appears that the Manitoba Government has since acted on the assumption that the disputed territory is within that Province, and has begun to exercise jurisdiction therein; and, amongst other things, sessions of the County Court of the Province of Manitoba have been appointed to be held at Rat Portage; a clerk for the court so to be held has been appointed; writs have been issued in the Court of Queen's Bench of the said Province against parties resident in the disputed territory; and a judge of a Manitoba court has already held one sitting at Rat Portage, and given judgment and ordered execution in cases brought before him.

The Government of Manitoba has made no communication to this Government in respect of any of its proceedings with respect to the said territory.

The stipendiary magistrate further reports that the Dominion Government had appointed an engineer in the employment of the contractors to act as timber agent at Rat Portage; that these contractors were taking timber for the purposes of their contract from the Crown Lands near Rat Portage; that they have also had a sawmill in operation for several months at Eagle Lake, making lumber, and are piling it up at the side of the railway to be shipped to Winnipeg when the railway is opened; that there is reason to believe that an effort will be made to procure a million ties, besides posts and telegraph poles, without paying dues thereon; that a large number of men are at work who have been sent out by another person in Winnipeg, who is named; and that if the contemplated proceedings are permitted to go on they will strip the country of its most valuable product.

The Agent of this Government at Prince Arthur's Landing reports that a gentleman, a resident of that place, has been exploring the pine timber on Lac Mille Lacs on the Height of Land (seventy miles from Prince Arthur's Landing); that the same person was then sending, or has sent, a party to make a survey of the locality; that he states he had applied to the Dominion Government for the timber, and was instructed to make this survey; and our Agent reports that the limits are good.

Various communications of the stipendiary magistrate further shew, that there is great need of a vigorous administration of the law in our territory north of the Height of Land, for the maintenance of peace and order; that there is much illicit liquor-selling in the territory, and much drunkenness, immorality and crime; that the question of jurisdiction has paralyzed his proceedings, and diminished his usefulness in the suppression of disorder; and that the intervention of the officers of the Dominion has greatly increased the difficulties he has to contend with. The recent assumption of jurisdiction by the neighbouring Province of Manitoba, with the evident concurrence and approval of the Dominion Government, will, no doubt increase the difficulty still further. It is to be noted, that the active interference of the Federal authorities with our rights has been on the westerly side of the Province, where, independently of the award, our title is most clear, where the territory is most valuable, and where a vigorous administration of justice is most needed.

The instructions given to the stipendiary magistrate on his appointment were, that he should assume that the territory assigned to this Province by the award belonged to this Province, and should act without any reference to its being in dispute. He was afterwards directed to avoid, until further instructed, any conflict with the officers of the Dominion or of Manitoba. He now, in view of the difficulties thrown in the way of the administration of civil and criminal justice, desires to receive further instructions for his guidance.

The Federal Government has not yet communicated to this Government a definite refusal to confirm the award, nor has there been any direct vote of Parliament to that effect; but that such is the determination of the Federal authorities is abundantly implied in the various Governmental acts, Federal Statutes, and votes in the Federal Parliament, which the undersigned has referred to; and more distinctly in the speeches of Federal Ministers in Parliament. For example, in the debate on the Manitoba Bill, the First Minister thought fit to say, amongst other things, that the award was of no

value; and that the boundary assigned to us could not be supported in any court or tribunal in the world*—an observation which, the undersigned apprehends, shows only that the speaker had not had time or inclination of late to study the case on which he was pronouncing judgment, and had forgotten the views formed and insisted upon by successive Governments of which he was either the head or a distinguished member.

The urgent importance of the immediate settlement of the boundaries of Ontario has been repeatedly affirmed by the Governments of Canada, before Confederation and afterwards; and the urgency has been increasing year by year. It was never so great as it is now; and it is possible that the present Federal authorities may have done all which they think it needful or expedient to do to embarrass or weaken the demand of the Legislature and people of Ontario for their awarded rights; and that, if this Province were willing, the Federal Government and the Government of Manitoba might now concur with this Government in stating a Case for the immediate decision of the questions at issue by Her Majesty's Privy Council (which was the proposal of the Federal Government in 1872); and might in connection therewith concur in some reasonably satisfactory provisional arrangements for the settlement of the territory, the preservation of the timber therein, the administration of justice, and the enforcement of peace and order. Shall a negotiation with these objects be proceeded with, the result to be submitted to the Legislature at its next session?

It certainly is not reasonable or just that this Province should be put to a second litigation of the question of Right; but, on the other hand, the Province desires to secure, peaceably and with all practicable expedition, whatever limits it is entitled to; and if the Federal authorities use their constitutional powers, however unjustly, to "compel" a second litigation, Ontario may have no alternative but to agree to this condition. In 1872 the Government of Ontario proposed a "reference to a Commission sitting on this side of the Atlantic"—one reason given for such preference being that "the solution of the boundary question depends upon numerous facts, the evidence as to many of which is procurable only in America, and the collection of which would involve the expenditure of much time." The evidence thus referred to having since been collected, this reason would no longer apply if the Federal and Manitoba Governments would consent that the evidence so collected and in print for the use of the Arbitrators (with any other documentary evidence, if such is found) should be the materials on which the reference to the Privy Council is to proceed.

The undersigned has pointed out some of the evils of the existing state of things. He cannot conceal from himself that further evils to this Province may be created by prolonged delay. Even uncertainty as to the proper authority both makes government more or less difficult, and retards settlement. Settlers cannot feel sure of their title to their lands, or to the improvements which they make. Some men rather like a state of lawlessness, and run all risks; but many do not; and these are deterred by the uncertainty from remaining in the country or having transactions in it. Again, if the practical effect of Federal measures should be Ontario's temporary withdrawal from the territory, the danger is not to be overlooked that the territory may permanently drift away from Ontario. The population will get accustomed to the laws of Manitoba; will come to consider themselves as not belonging to Ontario; and the lands and limits which they occupy will have, for title, grants, licenses, contracts, or permits from another Government. To change the jurisdiction over the territory after its principal accessible parts have become populated under such circumstances, may be found to be most inconvenient, and even to involve insuperable complications and difficulties. Should these results not follow, we cannot conceal from ourselves that it has been proved by long experience that a Government on this continent cannot, if it would, ignore occupants of Crown Lands, though they may be occupants without title; and that (generally speaking) the occupancy is ultimately clothed with the title, either without compensation, or on terms different from those which might properly be imposed if the possession were vacant. *A fortiori* might this be found to be the case in the present instance, as respects occupants who should receive grants or licenses from the Government of the Dominion or of Manitoba.

* Debates, House of Commons, 1881, page 1452.

Dominion Ministers, speaking for the Dominion Government, said and shewed that the Hudson's Bay Company were mere "squatters" on the lands they occupied;* and yet the Dominion found it expedient afterwards to pay to the Company a considerable compensation to get rid of their claims, though the compensation was small as compared with value of the territory. In the present case the obtaining of damages against the Dominion would be no adequate compensation to this Province for wrongs done by Federal legislation, or by the acts of the Federal Government. Such damages would come principally out of the pockets of Ontario taxpayers, as being the chief contributors to the revenue of the Dominion; and any indemnity we could receive would practically be paid to a large extent with our own money.

An appeal to the electors of the Dominion for the rights of the Province has been suggested. Such an appeal may not be practicable in time to prevent irremediable evils resulting from delay; the first general election for the Dominion may not take place until the autumn of 1883; and at this election, whenever it occurs, the question as to the territory in dispute may be overshadowed by other issues which in Dominion politics divide parties, and with which the Legislature and Government of Ontario have nothing to do.

Notwithstanding that the Federal Government, since the award, has repeatedly declined to discuss suggestions made by this Government for an adequate provisional arrangement to be acted upon pending the dispute, and has proposed no other provisional arrangement, and has made no official communication whatever as to any mode of determining the question of right, still, in view of all the circumstances, and especially of the very serious evils, present and prospective, which the course of the Federal Government has created, and of the absence of any means of peaceably preventing such evils,—the undersigned ventures to recommend that he may receive authority from Your Honour in Council to endeavour once more, by personal conference or otherwise as may be found expedient or useful, to ascertain for the information and action of this Government, and of the Legislature of Ontario at its next session, whether the Federal Government and the Government of Manitoba can now be induced to concur in any mode of accomplishing a permanent settlement in relation to the disputed territory, in connection with adequate and proper provisional arrangements; and if so, what the best terms appear to be to which those Governments may be prevailed upon to accede.

All which is respectfully submitted.

O. MOWAT.

November 1st, 1881.

THE LIEUTENANT-GOVERNOR TO THE SECRETARY OF STATE.†

GOVERNMENT HOUSE,

TORONTO, 31st December, 1881.

SIR,—I beg to call your attention to the unfortunate condition of that large portion of this Province to which the Federal authorities dispute our right. I desire specially to refer to that part of the disputed territory, comprising about 39,000 square miles, which lies on the westerly side of this Province, and to which, by the Act of last session for the extension of the boundaries of the Province of Manitoba (44 Vic., cap. 14), the Federal Parliament transferred to that Province the claim of the Dominion, so far as relates to the Provincial jurisdiction therein.

I beg to remind you that the importance of having settled without further delay all questions in regard to the boundaries of the Province was repeatedly stated, and even insisted upon, by your Government as long ago as the year 1872. Thus in an Order in Council, approved by His Excellency the Governor-General on the 9th April, 1872, it was affirmed to be "of the greatest consequence to the peace and well-being of the

* Letter to Sir F. Rogers, 16th January, 1869, Book Arb. Doc., p. 324.

† Sess. Papers, Ont., 1882, No. 23.

country in the vicinity of the dividing line, that no question as to jurisdiction, or the means of prevention or punishment of crime, should arise or be allowed to continue;" and it was not doubted "that both Governments would feel it their duty to settle, without further delay, upon some proper mode of determining, in an authoritative manner, the true position of such boundary."

On the 1st of May in the same year, Sir John A. Macdonald, the Premier, and then Minister of Justice, made a report, which was approved by Order in Council, in which report it was stated, in reference to the disputed territory, that "it was very material that crime should not be unpunished or unprevented;" and in this view it was suggested that "the Government of Ontario be invited to concur in a statement of the case for immediate reference to the Judicial Committee of the Privy Council of England." It was further stated that "the mineral wealth of the North-West country is likely to attract a large immigration into those parts; and with a view to its development, as well as to prevent the confusion and strife that is certain to arise among the miners and other settlers so long as the uncertainty as to boundary exists," it was recommended that a course of joint action should meanwhile be adopted by the Dominion and the Province "in regard to the grants of lands and of issuing licenses, reservation of royalties, etc."

By another Order in Council, approved on the 7th of November, 1872, His Excellency the Governor-General's Federal advisers obtained the sanction of the Crown to the statement that "the importance of obtaining an authoritative decision as to the limits to the north and to the west of the Province of Ontario had already been affirmed by a Minute in Council," and that "the establishment of criminal and civil jurisdiction, and the necessity of meeting the demands of settlers and miners for the acquisition of titles to land, combined to render such a decision indispensable."

On the 26th of June, 1874, a provisional arrangement was made for the sale of lands in the disputed territory, which arrangement was in force from its date until 3rd August, 1878, when the award was made. By the award so much of the territory theretofore in dispute as was situate east of the meridian of the most north-western angle of the Lake of the Woods (say longitude $95^{\circ} 14' 38''$ W.), was awarded to Ontario, and the claim theretofore made on behalf of this section of Canada to the territory beyond that meridian, to either the White Earth River or the Rocky Mountains, was negatived by the Arbitrators.

I beg to remind you that from that day to this the Federal Government has made no official communication to the Government of this Province of their intention to reject the award, but my Government has been left to gather this intention from the omission of the Federal Government for the first two sessions of Parliament to bring in any measure for the recognition or confirmation of the award; and from the speeches made in Parliament by Ministers during the last two sessions; and more distinctly from the transfer made last session to Manitoba by the Act already mentioned, and which Act, passed notwithstanding the remonstrances of this Government, had the effect of putting it out of the power of the Dominion to confirm the award without the concurrence of that Province.

My Government cannot doubt that the Federal authorities are aware, and will admit, that the progress of the country in the last nine years, and the realization during this period of the condition of things which in 1872 was only anticipated, have immensely increased the duty then perceived and expressed by your Government, that "no question as to jurisdiction or the means of prevention or punishment of crime should be allowed to continue;" and that there is a "necessity of meeting the demands of settlers and miners for the acquisition of titles to lands." Immigrants and others have, as anticipated, been attracted to the territory in dispute, in common with the rest of the North-West Territories; numerous settlers, miners and lumberers have now gone into the territory; a large floating population is there; also a considerable number of persons who desire to be settlers; and the lands, mines and timber of the territory are in active demand.

With respect to the timber, enormous quantities of it are being cut and removed by trespassers and others. Some of those engaged in the work assert that they have licenses, permits, or the like, from the Federal Government; and this Government has, in consequence, applied to your Government for information as to how far their pro-

ceedings have had the sanction of the Dominion Government ; but the information has not been given, nor has any notice been taken of the application for it.

A communication from our stipendiary magistrate in the territory (a copy of which, or of its material part, was transmitted to you on the 8th March, 1881,) shows—what also appears from other quarters—that the explorers and miners on the Lake of the Woods had suffered great disappointments and losses from the continuance of the territorial dispute ; that some of them had expended all their money in exploring and surveys, expecting an early return for their investments and toil, but that nothing could be done with mining capitalists because a sure title to lands could not be procured ; that the delay of another year would ruin many ; that many would be driven from the locality never to return, causing loss to merchants and others who had made advances to them ; that the people of the locality were suffering in many ways from the unsettled condition of affairs, there being no civil court of acknowledged jurisdiction to collect debts, no land agent to locate settlers, no registry office to record deeds, and no disinterested timber agent to protect the forests ; that all was uncertainty and confusion ; that the claims to mineral lands had become so mixed that those who claimed locations would soon be unable to recognize their own property ; that some places had been surveyed several times, the surveys covering each other ; that the magistrate had no doubt there would be fighting, and perhaps murder, over these claims ; that some persons were then armed to defend their supposed or assumed rights against wealthier claimants ; and that whiskey-sellers were plying their illicit calling with great success, and much to the injury of the district. Since the date of this communication, the Manitoba Act referred to has introduced new elements of confusion and disorder. Two sets of Provincial laws, and two sets of Provincial officers, distract the inhabitants of both the unorganized and the organized parts of the territory.

As regards the organized portions, which lie south and east of the Height of Land—and where, up to the time of Confederation, and for many years before, the authority of the laws, courts and officers of Upper Canada had always been assumed, by the Government and the population, without dispute or question, and where, since Confederation, the authority of Ontario had continued to be assumed in the same manner—the unfortunate position of the inhabitants now, was, (in the debate on the Manitoba Bill), pointed out by the leader of the Government to be this : “The people of Prince Arthur’s Landing may resist the processes of law ; they may say to the Sheriff that he is committing an illegality. A man may say to another who bring a suit against him, ‘This is the process of an Ontario Court, and Ontario laws do not extend here, because we are not part of that Province.’” The same things may be said in respect of the officers and courts of Manitoba in the same territory.

I have further to remind you that since the award was made, the Government of Ontario have repeatedly called the attention of your Government to the serious practical evils which were attending the dispute, and to the importance and duty of not delaying a settlement of the question, or of making adequate provisional arrangements if the award was not to be recognized by the Federal authorities ; but no measure has ever been recommended to Parliament to remove or alleviate, with reference to civil rights or the trial of civil matters, the evils thus arising from varying laws and disputed jurisdiction.

In criminal matters only has something of a provisional kind been done, namely, by the Dominion Statute 43 Vic., cap. 46, continued until the end of next session by 44 Vic., cap. 15 ; and this legislation is so defective that no magistrate or justice of the peace acting in this disputed territory can feel any assurance that his jurisdiction will not be disputed, or his officers set at defiance or sued in trespass.

An authoritative determination of the right might be accomplished at once, by the Parliament of Canada and the Legislature of Manitoba passing Acts for this purpose, under the authority of the Imperial Act 34 and 35 Vic., cap. 28 ; and otherwise. But my Government are aware that the policy of the present Federal Government and Parliament forbids any expectation of that course being adopted.

In 1872 your Government proposed an immediate reference to the Judicial Committee of the Privy Council ; and it was suggested in a communication to the Government

of Ontario that "no other tribunal than that of the Queen in Council would be satisfactory to the other Provinces of the Dominion, in a decision of questions in which they have a large interest, the importance of which is by current events being constantly and repeatedly augmented." My Government have observed also that in the debate in the Senate on the Manitoba Bill last session, Sir Alexander Campbell, speaking for the Government, said: "The boundary line will have to be settled. It will be settled, I suppose, by some reference to the Judicial Committee of the Privy Council of England, or some other tribunal. No particular burden will be thrown on Manitoba to procure a settlement." Speaking of the boundary line, the same Minister further observed: "Its location is a matter of dispute; and all we can do is to endeavour to get Ontario to agree to some tribunal by which it can be settled."

In the House of Commons' debate on the same Bill, at a subsequent time, the Premier said, speaking of his predecessors: "The Government were peculiarly bound to see that the question was left to a tribunal that could speak authoritatively; and I do not see, unless they were afraid of their case, why they [the Ontario Government] should have objected to the Imperial tribunal, to which it must go finally. That is the only way of settling the case. All must submit to that, the highest tribunal in the Empire."

Having reference to these observations, and remembering that the award of the distinguished gentlemen who were chosen by the two Governments as Arbitrators, and whose ability and impartiality have always been acknowledged, has not been satisfactory to the Federal authorities, I do not suppose that any tribunal constituted by agreement of the parties would, under all the circumstances, be proper or satisfactory.

A reference to the Judicial Committee of the Privy Council, or to any other tribunal, would involve much loss of time; and meanwhile the advices received from the territory indicate that the timber therein is being destroyed; that enormous quantities of it are being practically lost to the Province; and that the development of the territory is arrested, to the permanent injury of this Province, by the continued absence of undisputed authority to enforce order, administer justice, and grant titles. The evils arising from this state of things are so great, and are increasing so rapidly, and it is so important that the Province should without further delay secure peaceable possession of whatever limits it is entitled to, that my Government would be willing, with the concurrence of the Legislature, to submit the matter to the Privy Council, on condition of consent being given by the Dominion Government and that of Manitoba, and by the Parliament of Canada and the Legislature of Manitoba, to just arrangements for the government of the territory in the meantime.

Without such provisional arrangements, this Province may as well wait for the confirmation of the award, which (so far as concerns the rights and powers still remaining to the Dominion) my Government confidently expect from another Parliament, as go to the expense, and have the unavoidable delay of a second litigation.

From the time that it became manifest that the Dominion Government did not contemplate an early recognition of the award, provisional arrangements have from time to time been suggested by this Government, and by the Attorney-General on its behalf. I beg to refer you to the communications containing these suggestions; and I may add that your Government has not hitherto made any of them the subject of communication to this Government; nor have any counter propositions hitherto been suggested.

It may be convenient here to state the substance of these suggestions:

(1) By reason of the award, and of its accordance with the contentions of the Province and Dominion of Canada up to 1870, the *prima facie* title to the territory must be admitted to be in the Province of Ontario; and it was therefore proposed that, pending the dispute, this Province should have the authority of the Dominion to deal with the lands and timber (as in the other parts of the Province), subject to an account if the title is ultimately decided to be in the Dominion, and not in the Province.

(2) As (without a state of practical anarchy) there cannot continue to be two systems of law in this great territory of 39,000 square miles, the law of Ontario should, by proper legislation, be declared to govern in regard to matters which, by the British

North America Act, are within Provincial jurisdiction. This, or any other arrangement with regard to these matters, will now require legislation by Manitoba.

(3) It was further proposed that, pending the dispute, the jurisdiction of our Courts and officers should be recognized and confirmed; and that the jurisdiction of our stipendiary magistrates in the disputed territory should be increased to the extent contemplated by the disallowed Act, 42 Vic., cap. 19, Ont. This extended jurisdiction, it may be observed, would not be so great as the jurisdiction which has been conferred by Dominion Statutes upon similar magistrates in the territories of the Dominion. To prevent doubts, there should be legislation by the Federal Parliament, and by the Legislatures of both Manitoba and Ontario.

The Manitoba Act of the last session of Parliament has rendered necessary the concurrence of the Government and Legislature of Manitoba in the provisional arrangements referred to. But it is presumed that such concurrence would, if now desired or approved by the Federal Government, be given gladly; for it is not to be supposed that that Province—with its small revenue, and with the enormous additional demands upon it for the government and development of its undisputed territory, increased by the same Act from 13,464 to upwards of 100,000 square miles—can desire to have the further expense and responsibility of the temporary government of 39,000 square miles of disputed territory, which may never be theirs, and to which such of the people of Manitoba as may take the trouble to learn the facts, must feel it not improbable that Ontario has the right; since such was in effect the view taken and acted upon in every way by the successive Governments of Canada up to 1870; and since such highly competent referees as the Right Honourable Sir Edward Thornton, then Her Majesty's Ambassador at Washington, and now her Ambassador to the Court of St. Petersburg, the late Honourable Chief Justice Harrison, and the Honourable Sir Francis Hincks, K.C.M.G., declared and awarded the disputed territory to be within the boundaries of this Province.

I have called the Ontario Legislature to meet for the dispatch of business on the 12th of January. I perceive that the Parliament of Canada is to meet in the following month, and I would respectfully urge the great importance of my being officially informed, before the meeting of our Legislature, whether the Dominion Government is now willing, with the concurrence of the Legislature of Manitoba, so far as such concurrence is necessary, to agree to the arrangements which have been suggested, and to obtain from Parliament at its approaching session the Dominion legislation necessary to give effect to such arrangements. Or, if the Dominion Government is not willing to agree to the arrangements suggested, my Government would be glad to be informed what the best terms are to which your Government is prepared to agree, for the final settlement of the question of right, and for the provisional government of the territory in the meantime. I beg to remind you once more that since the award, no terms have ever been proposed to this Government with reference to either matter, unless it may be in the informal, and so far nugatory, negotiations which have recently taken place with the Attorney-General.

I beg also to renew the request made in a former despatch, but not hitherto noticed by your Government, for information as to the transactions of your Government with respect to the disputed territory since the date of the award. What my Government desire to have is, information of all transactions with respect to the timber and lands respectively, including copies of all grants, licenses, permits, regulations, instructions, letters, documents and papers of every kind relating to the same. This information my Government submit that they are entitled to receive, whether there is to be a provisional arrangement or not.

It has recently been stated in the public journals that the Federal Government had assumed authority to grant to the Pacific Railway Company land for their line of road through the disputed territory, and for timber purposes, a breadth of twenty miles on each side of this road throughout its whole length. No communication on the subject has been received from the Federal Government. If the newspaper statement is correct, my Government respectfully submit that, as the right to the territory is in dispute, no such grant should have been made without the concurrence of the Provincial authorities; and that if their concurrence was not cared for, they should at all events have had

previous notice of what was contemplated, that they might have had an opportunity by negotiation or expostulation, of seeing that, if possible, the interests of the Province were not set at naught. I have respectfully to request copies of the Orders in Council and other documents (if any) relating to the transaction.

I have the honour to be, Sir,

Your obedient servant,

J. B. ROBINSON.

To the Honourable the Secretary of State,
Ottawa.

EXTRACT FROM THE SPEECH OF HIS HONOUR THE LIEUTENANT-GOVERNOR ON THE OPENING OF THE ONTARIO LEGISLATURE, 12TH JANUARY, 1882.*

I regret that since your last Session no progress has been made towards a recognition of the right of the Province to that extensive portion of its territory, our title to which, notwithstanding the award of the distinguished Arbitrators appointed by the two Governments, the Federal authorities have continued to dispute. The grave practical evils resulting from the dispute have, since you last met, been greatly increased by an Act of the Federal Parliament transferring to the Province of Manitoba, so far as relates to Provincial jurisdiction, the claim of the Dominion to the most valuable part of the disputed territory, including our organized municipalities south and east of the Height of Land. While the Bill was before the House of Commons, I addressed to the Federal Government a despatch protesting, on behalf of Ontario, against this part of the intended Act. A copy of my despatch, with other papers relating to the territory, will be laid before you.

PARAGRAPH THREE OF THE PROPOSED ADDRESS, IN REPLY TO THE LIEUTENANT-GOVERNOR'S SPEECH AT THE OPENING OF THE ONTARIO LEGISLATURE. MOVED 13TH JANUARY, 1882.†

3. That we agree with His Honour that it is to be regretted that since our last Session no progress has been made towards a recognition of the right of the Province to that extensive portion of its territory our title to which, notwithstanding the award of the distinguished Arbitrators appointed by the two Governments, the Federal authorities have continued to dispute; and that the grave practical evils resulting from the dispute have, since we last met, been greatly increased by an Act of the Federal Parliament transferring to the Province of Manitoba, so far as relates to Provincial jurisdiction, the claim of the Dominion to the most valuable part of the disputed territory, including our organized municipalities south and east of the Height of Land; and we are glad to learn that while the Bill was before the House of Commons His Honour addressed to the Federal Government a despatch protesting, on behalf of Ontario, against this part of the intended Act, and that a copy of his despatch, with other papers relating to the territory, will be laid before us.

On the 26th January, 1882, Mr. Meredith, seconded by Mr. Morris, moved in

AMENDMENT TO THE THIRD PARAGRAPH OF THE PROPOSED ADDRESS,‡

That the third paragraph be struck out, and the following substituted therefor:—
“That while we regret the delay which has occurred in the final settlement of the

* Journals Leg. Ass., 1882, Vol. 15, p. 3.

† *Ibid.*, p. 9.

‡ *Ibid.*, pp. 21-3.

Northerly and Westerly Boundaries of the Province, and while we are prepared at all times to maintain by all lawful and constitutional means its territorial and other rights, we deprecate the taking of any course in the enforcement of those rights which is calculated to disturb the peace of the Dominion, and we desire to express our regret that your Honour's advisers have not taken the only lawful and constitutional means which in the absence of the approval of the award by the Parliament of Canada are open for the determination of the question in reference to such boundaries."

Mr. Sinclair, seconded by Mr. Hagar, moved in

AMENDMENT TO THE AMENDMENT,

That all after the first word "That" in the amendment be struck out, and in lieu thereof, there be inserted these words, "that part of the original resolutions under consideration by the House be amended by adding thereto the words following:—And we avail ourselves of this, the earliest opportunity at the present session, to reiterate our determination to give our cordial support to any steps which may be necessary for ascertaining and maintaining the just claims and rights of Ontario, as by the said award found and determined; and in the name of the people of Ontario we emphatically insist that any absence of prior legislation on the part of the Dominion to give effect to the conclusions which should be arrived at by the Arbitrators, can neither justify nor excuse the action of the Dominion authorities in now repudiating the said award, and refusing to give to Ontario her just rights as thereby ascertained and determined."

And a debate having arisen,

Ordered, That the debate be adjourned until to-morrow.

On the 27th January the Amendment to the Amendment, having been put, was carried on the following

DIVISION :

YEAS—Messieurs Appleby, Awrey, Badgerow, Ballantyne, Baxter, Bishop, Blezard, Bonfield, Caldwell, Cascaden, Chisholm, Crooks, Deroche, Dryden, Ferris, Field, Fraser, Freeman, Gibson (Hamilton), Gibson (Huron), Graham, Hagar, Harcourt, Hardy, Hawley, Hay, Hunter, Laidlaw, Livingston, Lyon, McCraney, McKim, McLaughlin, MacMahon, Mack, Miller, Mowat, Murray, Nairn, Neelon, Pardee, Peck, Robinson (Cardwell), Robinson (Kent), Robertson (Halton), Sinclair, Snider, Striker, Waters, Watterworth, Wells, Widdifield, Wood, Young—54

NAYS—Messieurs Baker, Baskerville, Bell, Boulter, Brereton, Broder, Creighton, French, Jelly, Kerr, Lauder, Lees, Long, Macmaster, Madill, Meredith, Merrick, Metcalfe, Monck, Morgan, Morris, Near, Richardson, Robertson (Hastings), Tooley, White—26.

THE THIRD PARAGRAPH, AS AMENDED,

was then read as follows :—*

That we agree with His Honour that it is to be regretted that since our last session no progress has been made towards a recognition of the right of the Province to that extensive portion of its territory our title to which, notwithstanding the award of the distinguished Arbitrators appointed by the two Governments, the Federal authorities have continued to dispute; and that the grave practical evils resulting from the dispute have, since we last met, been greatly increased by an Act of the Federal Parliament transferring to the Province of Manitoba, so far as relates to Provincial jurisdiction, the claim of the Dominion to the most valuable part of the disputed territory, including our organized municipalities south and east of the Height of Land; and we are glad to learn that while the Bill was before the House of Commons, His Honour addressed to the Federal Government a despatch protesting, on behalf of Ontario, against this part of the

intended Act, and that a copy of his despatch, with other papers relating to the territory, will be laid before us. That we avail ourselves of this, the earliest opportunity at the present session, to reiterate our determination to give our cordial support to any steps which may be necessary for ascertaining and maintaining the just claims and rights of Ontario, as by the said award found and determined; and in the name of the people of Ontario we emphatically insist that any absence of prior legislation on the part of the Dominion to give effect to the conclusions which should be arrived at by the Arbitrators, can neither justify nor excuse the action of the Dominion authorities in now repudiating the said award, and refusing to give to Ontario her just rights as thereby ascertained and determined.

Agreed to, on the same division.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.*

OTTAWA, 27th January, 1882.

SIR,—I have the honour to inform you that His Excellency the Governor-General has had under his consideration in Council your despatch bearing date the 31st December, 1881, relating to the disputed territory west and north of the Province of Ontario.

I have now to state for the information of your Government as follows:

1. The position of His Excellency's advisers has been uniform from the beginning. They have on all occasions been anxious to obtain from the highest tribunal approachable, an authoritative decision of the question in dispute, but have been unwilling, and have considered it inconsistent with their duty to treat the matter as one which might be dealt with by arbitration.

2. There is a legal boundary between Ontario and the recently acquired North-West Territories; and as representing the various Provinces of the Dominion who have acquired that territory, it is the duty, it is conceived, of the Government of the Dominion not to give away any part of it, nor to agree to arbitration upon its boundary, but to ascertain what its legal extent is.

3. This disposition on the part of His Excellency's advisers was also the conviction of the Government in office at the time the territory was acquired, and for some years afterwards, and the anxiety which is felt now was expressed then by the several Orders in Council which are referred to in your Honour's despatch.

4. The North-West Territories were acquired in 1870, and on the 9th of April, the 1st of May, and the 17th of November, 1872, the importance of settling the boundary, and of settling it as a question of law, which could be determined by a Judicial Tribunal, was pressed upon the consideration of His Excellency's predecessor, and communicated to the Government of Ontario by the several Orders in Council referred to in your despatch.

5. Had the proposal then made for the submission of the dispute to the Judicial Committee of the Privy Council been accepted by Ontario, the delays and inconveniences alleged in the communication under consideration to have occurred would have been avoided. The matter would long since have been settled by the highest authority in the Empire, and the boundary between Ontario and the then recently acquired North-West Territories authoritatively and finally settled.

6. His Excellency's advisers believe that it is much to be regretted, in the interest of Ontario, as well as of the Dominion at large, that a proposal so reasonable in itself, and which would have brought to the consideration of the legal question involved the most learned and accomplished minds in the empire, and given every assurance of a speedy and satisfactory decision, and one which would have commanded universal assent, was not accepted by the Government of Ontario.

* Sess. Papers, Ont., 1882, No. 23; Return, Ho. Coms., dated 14th February, 1882.

7. It does not appear that any response was made by the Government of Ontario to the proposal to submit the question to the Judicial Committee of the Privy Council.

8. The proposal of 1874, referred to in your despatch, that the question in dispute should be referred to arbitration, does not seem to have been treated by either Government as a mode of seeking an authoritative decision upon the question involved as a matter of law, but rather as a means of establishing a conventional line without first ascertaining the true boundary. In corroboration of this view it is to be noted, that of the three gentlemen who made the award referred to in your despatch under the reference of 1872, two were laymen, and only one of the profession of the law.

9. His Excellency's advisers are of opinion that in advance of Parliamentary sanction it was not only highly inexpedient, but transcended the power of the Government of the day to refer to arbitration the question of the extent of the North-west Territories acquired by the Dominion by purchase from the Hudson's Bay Company.

10. That territory had been acquired on behalf of, and was in fact held for, all the Provinces comprised in the Dominion, and the extent of it was a question in regard to which, if a dispute arose, Parliament only could have absolved the Government of the day from the duty of seeking an authoritative determination by the legal tribunals of the country. Such a decision having been once obtained, if it had been found that it promised to be to the convenience of Ontario and the adjoining Province that a conventional boundary should be established in lieu of the legal boundary, authority might have been sought from the Legislatures of those Provinces and from the Parliament of the Dominion for the adoption of such a conventional line.

11. That the course pursued was not intended as a means of seeking a legal boundary is further shown by the course pursued by the Legislature of Ontario, who, under the provision contained in the Imperial Act 34 and 35 Vic., Cap. 38, enabling the Parliament of Canada to increase, diminish, or otherwise alter the limits of a Province, with the assent of its Legislature, passed an Act giving their assent to the limits of their Province being changed by Parliament to meet the award, whatever it might be. The passage of such an Act shows that it was not sought that the true boundary line should be ascertained, but that a conventional one should be laid down.

12. It must further be observed that a Committee of the House of Commons has reported as follows, viz.:—

"In reference to the award made by the arbitrators on the 3rd day of August, 1878, a copy of which is appended (p.), your Committee are of opinion that it does not describe the true boundaries of Ontario. It seems to your Committee to be inconsistent with any boundary line ever suggested or proposed subsequent to the Treaty of Utrecht (1713). It makes the Provincial boundaries run into territory granted by Royal Charter in 1670 to the Merchants Adventurers of England trading into Hudson Bay, and it cuts through Indian territories which, according to the Act 43 George III., Cap. 138, and 1 and 2 George IV., Cap. 66, formed 'no part of the Provinces of Lower Canada or Upper Canada, or either of them,' and it carries the boundaries of Ontario within the limits of the former colony of Assiniboia, which was not a part of Upper Canada," showing how unwarrantable it would have been for the Government of the Dominion to have undertaken to ask Parliament to adopt the award as one defining the true boundaries.

13. On assuming office, His Excellency's present advisers found that no authority had been obtained from Parliament for the reference made in 1874 of the dispute to arbitration. They themselves were opposed to that mode of disposing of the question, conceiving it to be inexpedient and lacking in legal authority, and that the duty of the Government was to seek for the disposal of the matter as a question of law.

14. It is to be borne in mind that when the proposal of the reference to the Judicial Committee of the Privy Council was suggested, and its expediency enforced by the Dominion Government in 1872, the Supreme Court of Canada had not been brought into existence, and there was therefore no high tribunal other than the Judicial Committee of the Privy Council in England by which the question in dispute could have been authoritatively settled.

15. In 1875 the Act creating the Supreme Court was passed by the Parliament of

Canada, the British North America Act, 1867, authorizing that Court to be created *inter alia* for the purpose of dealing with inter-Provincial and constitutional questions, and upon the creation of that Court it would seem to have become the tribunal to which both Federal and Provincial Governments should have resorted for the decision of the question now under discussion.

16. As in 1872 the Government of the day was anxious to submit the question to the then highest tribunal, so now His Excellency's present advisers would readily consent to use the influence of the Dominion Government with that of Manitoba to obtain a submission of the whole question as to the boundary to the Supreme Court of Canada, under the 52nd section of the Act of 1875, establishing the Court. They trust with confidence that their exertions with the Government of Manitoba would be attended with success, and that such submission would be agreed to by that Government.

17. Another method of obtaining an authoritative decision was pointed out to the Attorney-General of Ontario at an interview sought for that purpose with him by Sir John Macdonald and the Minister of Justice, who, on the 21st of November last, proposed to Mr. Mowat, at his office in Toronto, that the Government of the Dominion and that of Ontario should unite in soliciting the good offices of some eminent English legal functionary for the purpose of determining the true boundary line. The names of Lord Selborne, who was then, it was reported, likely to seek relief from the fatigues of his office, and of Lord Cairns, were suggested by Sir John Macdonald, who proposed that one or other of these noblemen, or some other distinguished legal functionary, should be invited to come to Canada, to sit in Toronto or elsewhere, for the purpose of hearing the evidence and deciding upon the boundary question as one of law, susceptible of being determined by evidence as other important questions are.

18. The great advantage in such a submission would be that whilst legal ability and learning of the highest character would be secured for the decision of the question, it would have given both parties the opportunity of submitting such evidence as they might think proper, and the difficulty of agreeing on facts, and settling a case to be submitted to the Privy Council, would have been avoided. Evidence would be heard upon the spot, and the fact of the hearing and the arguments of counsel taking place in the country would have tended to command general assent.

19. This proposition was taken into consideration by Mr. Mowat, and it is only recently that he conveyed to the Minister of Justice his indisposition to accede to that proposal; but it is one which His Excellency's Government is still ready to adopt, if their previous suggestion of a submission to the Supreme Court of Canada should not command the assent of the Government of Ontario.

20. As regards the assertion in Your Honour's despatch, that the enlargement of the boundaries of Manitoba has complicated the present question, this Government are unable to adopt the view put forth in the despatch. The original confines of Manitoba were very small, and the rapidly augmenting population of that Province had made the fact a ground of continued complaint, and the Local Government had urged upon the Government of the Dominion that the limited extent of their Province paralyzed their efforts in the development of the Province, in the establishment of municipalities, and the creation of means of communication, and otherwise. It was uncertain how long the disputed boundary question might remain open, and His Excellency's Government felt themselves constrained, finally, to recommend the enlargement of the boundaries of Manitoba, but Parliament did so in such a manner, and in such language, as carefully guarded against the step constituting any interference with the disputed question of the western limits of Ontario.

21. It is believed that the Government of Manitoba would readily acquiesce in the question of the boundary line being brought for decision either before the Supreme Court of Canada or the high legal functionary, as suggested by Sir John Macdonald and the Minister of Justice, to Mr. Mowat, on the occasion referred to.

22. His Excellency's advisers look upon this question as one which should be considered rigidly as one of Law, on account of the fiduciary character which they hold in regard to the various Provinces of the Dominion, whose money was expended in the acquisition of the territory, and who are now largely exerting and taxing themselves for

the purpose of constructing a line of railway through it, to which the Government of Ontario (although the railway passes for upwards of 600 miles through its territory) have refused to contribute any aid in land, as has so largely been done out of the North-West Territories by the Dominion.

23. The Government of the Dominion believe that the interests of Ontario are considered by the action which they advise as much and as strongly as the interests of any other Province. Their only anxiety is that a legal question in which Ontario is interested by itself, and in which it is interested also as a member of the Confederation, should be disposed of by a Legal Tribunal.

24. They heartily wish that the proposal urged by the Dominion Government in 1872 for a submission to the Judicial Committee of the Privy Council had been accepted by Ontario, and they cannot but attribute much of the inconvenience and delay alleged in your despatch to have occurred to the refusal of Ontario to unite in such a submission.

25. To the arbitration of 1874 His Excellency's Government was unable, for the reasons assigned, to give their adhesion; but, with Ontario, they believe it to be of the greatest importance that the dispute should be settled, and they will be anxious to further in every way in their power the submission of the question either to the Supreme Court of Canada or to an eminent legal functionary, to be mutually agreed upon; or, if it be preferred by the two Provinces of Ontario and Manitoba, to the Judicial Committee of the Privy Council, although His Excellency's advisers would prefer that it should be decided in Canada, either by the high legal functionary, as suggested, or by the Supreme Court, with the right of applying to the Judicial Committee of the Privy Council for an appeal to the Queen from any decision which may be arrived at, should either Province desire it.

26. The question of the title to the land in the disputed territory should not be confused nor mixed up in any way with that relating to the boundaries.

27. The Indians, and the Crown, and those claiming under them, have rights which can be decided by the ordinary tribunals of the Province within which the land in dispute may finally be found.

28. With respect to the timber, of which it is said in Your Honour's despatch that enormous quantities are being cut and removed by trespassers and others, this Government have ascertained that no licenses have been issued to cut timber east of that boundary since the establishment of the Conventional line in 1870. Information regarding all permits, licenses, and other transactions would be readily furnished to the Government of Ontario at any time.

29. The assumption in your despatch that the Conventional boundary terminated on the 3rd August, 1878, the date of the award referred to, seems to be without foundation; but if the Conventional line is to be considered as having been then abrogated, it must be considered as at an end for all purposes, leaving both parties to assert their own rights in reference to all the questions involved.

30. As regards the Government of the country, and the enforcement of law and order in the meantime, it was intimated to Mr. Mowat, at the interview above referred to, that the Government of the Dominion would be ready to agree to such measures as were necessary to prevent confusion in these important respects. The suggestion was then made that all Justices of the Peace residing in the disputed territory should receive commissions from both Ontario and Manitoba, and that all the judges of Ontario and all the judges of Manitoba should be put in a joint commission as regards the disputed territory. The laws of Ontario and Manitoba being alike in most respects, no confusion would probably arise. That in criminal matters the Act 43 Vic., Chap. 36, had made, it was thought, satisfactory provision; or if there was anything deficient, the Government of the Dominion would be ready to ask Parliament to supply it. That where there was found to be a practical difference between the laws of Ontario and those of Manitoba, the Government of the Dominion would use its good offices with the Government of Manitoba to induce

them to consent that the law to be administered should be that of Ontario, as regards all matters of Provincial jurisdiction, until the legal limits of both Provinces should be finally ascertained.

I have the honour to be, Sir,

Your obedient servant,

J. A. MOUSSEAU,
Secretary of State.

His Honour the Lieutenant-Governor of Ontario,
Toronto.

THE LIEUTENANT-GOVERNOR TO THE SECRETARY OF STATE.*

TORONTO, 18th February, 1882.

SIR,—I have the honour to acknowledge the receipt of your despatch dated 27th January last, and, for the information of the Government of the Dominion, I beg to submit the following reply.

My Government are glad that, though the Federal Government have for more than three years refrained from noticing requests and suggestions repeatedly made by the Government of Ontario with respect to the disputed territory, and from making any official communication of the views of your Government as to the question of title, or as to provisional arrangements necessary for the government and settlement of the country while your Government were pleased to dispute our title, your despatch has at last placed this Government in official possession of the views of the Federal Government on these subjects. My Advisers deeply regret to find those views so unsatisfactory, and (as they respectfully submit) so unjust to the people of Ontario. But a frank discussion of them may be of service to the interests concerned.

Your despatch intimates distinctly, what had been already perceived, though not before officially stated to this Government, that the policy of your Government is to reject and disregard the Award; and your despatch states the reasons for this course. I notice that among these reasons it is not suggested (as of course it could not be), that the arbitrators were not able and impartial men, well known, and held in high estimation in this country; or that they had not before them all the known evidence bearing on the subject with the decision of which they had been entrusted; or that they did not do their best to come to a correct conclusion. The reasons which you give are of an entirely different kind, namely, "that the reference transcended the power of the Government of the day;" that the matter should be "considered rigidly as one of law;" that the duty of the Government was to seek "an authoritative determination by the legal tribunals of the country;" that the reference "was not intended as a means of seeking a legal boundary," but that the object of it was that "a conventional line should be laid down;" and that His Excellency's present advisers were "opposed to disposing of the question" by arbitration, conceiving that mode to be "inexpedient and lacking in legal authority." These seem to my Advisers to be, under the circumstances, unprecedented grounds of objection. A difference of opinion between one set of Ministers and their successors as to the expediency of having settled a controversy by arbitration, seems to my advisers to be no sort of justification for the repudiation of an Award after it has been made in good faith.

Awards and Treaties between Governments often require subsequent Parliamentary sanction; but in such cases my advisers claim that, according to the ethics of nations, it is the recognized and bounden duty of the Governments to obtain such sanction, or to do their best to obtain it; nor are changes in the *personnel* of either Government allowed to affect the obligation.

There are very recent examples of this old-established doctrine. The British Gov-

ernment thought it their duty to obtain the prompt sanction of Parliament to the Alabama Award, though it was not, like the present, a unanimous Award, and though both the Government and the people regarded the amount awarded as excessive and exorbitant. So, on the other hand, in the United States of America, Congress gave prompt effect to the Fishery Award, though it was not a unanimous Award, and though the people and their representatives regarded it as grossly unjust. In the present case a unanimous Award has for more than three years been disregarded by the Federal authorities of Canada; and, while they contend that it assigned to Ontario more extensive boundaries than, as a matter of rigid law, this Province possessed, there is (on the contrary) reason for believing that if the Award errs in that respect, the error is in assigning to Ontario too little territory instead of too much.

It appears to my advisers that many circumstances give exceptional force to the considerations which demanded the acceptance of the Award by the Federal authorities.

The reference was made with the practical concurrence of Parliament; and Ontario had every reason for assuming and relying upon the general acquiescence of the Dominion. The reference had been agreed to in November, 1874. It was embodied in Orders of Council, approved by His Excellency the Governor-General and by His Honour the Lieutenant-Governor respectively. The three Arbitrators were immediately notified of their appointments, and their consent to act obtained. The reference was publicly known, and seemed to receive general approval. The Legislature of Ontario, in 1875, passed the Provincial Act to which your despatch refers, and, in common with the Dominion Government, proceeded, at considerable expense, to obtain, for the purposes of the arbitration, from Europe and America, all documentary and other evidence bearing on the question in dispute. The Imperial Government was apprized of the arbitration, and its assistance was given in an exhaustive search of the Colonial Office for State Papers. The fact of the reference was communicated by Ministers to Parliament at its first session after the reference had been agreed to, and it was repeatedly alluded to during the Parliamentary sessions held before the making of the Award. At no one of the four sessions intervening was any motion passed, or even proposed, in either House of Parliament, disapproving of the reference; nor, so far as my advisers are aware, did any member at any one of these sessions contend or suggest that the reference "transcended the power of the Government of the day," as is now alleged. Two or three members expressed an opinion in favour of a different mode of settlement; and even this expression of opinion seems to have occurred in the session of 1875 only. In the session of 1878 an appropriation of \$15,000 to pay the expenses incident to the reference was voted by Parliament; and without objection or question by anyone.* The documents and other evidence obtained from time to time were printed; statements of the case of the respective Governments were prepared and furnished to the Arbitrators; the question was argued by counsel on both sides; and the Award assigned to this Province part only of the territory which the Dominion Ministers, before compromising with the Hudson's Bay Company, had claimed as clearly belonging to this section of Canada.

The Award was made on the 3rd August, 1878. A change of Government took place on the 17th October following. The new Government on coming into office gave no notice to this Province that the Award was to be repudiated. On the 1st November, 1878, a map of that date was "published by order of the Honourable the Minister of the Interior," marking the boundaries of Ontario in precisely the manner assigned by the Award. On the 31st December, 1878, a despatch to your Government stated that a measure would be introduced during the then approaching session of the Ontario Legislature, to give effect to the Award by way of declaratory enactment and otherwise; and the despatch suggested that a like Act should be passed by the Parliament of the Dominion.† In answer to this despatch no notice was given that the Federal Government meant to repudiate the Award; no warning to refrain from passing, or to postpone passing, the proposed Act; and accordingly the Ontario Legislature, at its next session, passed an Act consenting that the boundaries, as determined by the Award, should be

* House of Commons Debates, 1878, p. 2528, item 292.

† Sessional Papers, Ontario, 1879, Vol. 2, No. 80.

the northerly and westerly boundaries of the Province,* A like Act not having been passed at the next session of the Federal Parliament, and no reason for the delay or omission having been communicated to this Government, two despatches were addressed to your Government, dated respectively 23rd September and 19th December, 1879. In the despatch of the 23rd September, it was, amongst other things, urged that, an Award having been made in pursuance of a reference by the two Governments, it was just that there should be no further delay in formally recognizing the Award as a conclusive settlement of the matters submitted to the arbitrators; that the Government of Ontario did not doubt that the Government and Parliament of Canada would ultimately take the same view; but it was respectfully represented that the delay in announcing the acquiescence of the Dominion authorities, and in otherwise giving full effect to the Award, had been embarrassing and injurious.† By the despatch of 19th December, 1879, the attention of your Government was called to a former despatch, and it was intimated "that the arbitrators having made their Award, the Government of the Province understand that the provisional arrangement theretofore in force between the Province and the Dominion" was "at an end, the Award having 'definitely settled' the boundaries of the Province and the Dominion," within the meaning of the provisional arrangement.‡ The receipt of these despatches was formally acknowledged, but neither of them was answered otherwise. No exception was taken to the alleged termination of the provisional arrangement; and the Province was still left without any intimation of an intention to repudiate the Award. The first intimation of this intention was given during the session of Parliament held in the year 1880. Until then there was no known act of the Federal Government or speech of Federal Ministers which did not consist with an ultimate recognition of the Award by the Government of Canada.

The recognition of the Award by the Parliament of Canada is desirable, to prevent doubts and disputes; but my Government do not admit that the Award has no legal force without such Parliamentary action. It is to be remembered that the British North America Act contains no provision giving authority to Parliament to deal with the boundaries of the Dominion or Provinces; and my Government contend that the reference was within the powers incident to Executive authority. It is admitted in your despatch that a reference to the ordinary legal tribunals would have been within such authority, and it is not easy to see why a reference, made in good faith, and with the acquiescence of Parliament for several years, to a Tribunal created by mutual consent for the purpose, should stand in a different position. Even if the Award is supposed to have no legal effect until sanctioned by Parliament, still it appears to my Government to be inconsistent alike with reason and justice, with British precedent and practice, that the Federal Government should, at this late date, and after all these proceedings, refuse to ask such Parliamentary sanction, or that His Excellency's present Advisers should seek to excuse a repudiation of the Award, by alleging inability in their predecessors to sanction an arbitration, or by the preference of His Excellency's present Advisers for some other scheme of adjustment. References to arbitration, without previous Parliamentary sanction, of matters involving large sums of money have been frequent; and, for this purpose, between questions of money and questions of territory there is not in reason any solid distinction. If, as your despatch suggests, the Dominion Government occupy a fiduciary position with reference to the territory in question, it is equally true that they occupy a fiduciary position in regard to every power which, as a Government, they possess or exercise.

It seems to my Government that, under all the circumstances, the Award should have been promptly accepted, even if it had appeared that the arbitrators had not found or awarded what they considered to be the legal boundaries, and, disregarding these, had merely laid down the boundaries which they deemed most convenient and reasonable. But it so happens that the surmise in your despatch, that the Governments did not contemplate that the arbitrators should find the legal boundaries, is unsupported by evi-

* 42 V., chap. 2, Ont.

† Sessional Papers, Ontario, 1880, No. 46.

‡ Sessional Papers, Ontario, 1880, No. 46, p. 2; *Ib.* 1875, No. 14.

dence, and is entirely without foundation. The Order of the Privy Council of 12th November, 1874,* expressly stated the object to be "to determine by means of a reference THE northern and western boundaries" of the Province; and the Order provided, that the "determination of a majority of such three referees be *final and conclusive* upon the limits to be taken as and for such boundaries respectively." The Minister further recommended, and His Excellency approved the recommendation, "that the Dominion agree to concurrent action with the Province of Ontario in obtaining such legislation as may be necessary for giving binding effect to the conclusions arrived at, and for establishing the northern and western limits of the Province of Ontario in accordance therewith." The Order of the Lieutenant-Governor in Council was to the same effect as regards this Province.

One of the arbitrators who were first named having died, and another having resigned, new arbitrators were appointed in their places—viz., Chief Justice Harrison and Sir Francis Hincks; and, these gentlemen having signified their acceptance, they were promptly put in possession of the documentary and other evidence. The formal Orders in Council appointing them were made some time afterwards, and when the arbitrators met to hear counsel—viz., on the 31st July, 1878. By the Order in Council of that date, approved of by His Excellency, it was again provided "that the determination of the Award of such three arbitrators, or a majority of them, in the matter of the said boundaries respectively, be taken as *final and conclusive*," with the same agreement as before with respect to legislation.† A like Order in Council was passed by the Ontario Government. It is not pretended that the arbitrators received any instructions beyond the Orders in Council. The statements of the case which were prepared by counsel for the respective Governments, and printed and laid before the arbitrators, discussed the question of boundaries as a matter of law.‡ The *viva voce* arguments also of counsel, on both sides, before the arbitrators dealt with the question as a matter of law;§ and the Award affirms that it determines and decides "what *are* and shall be the northerly and westerly boundaries of the Province."||

To assume in the face of all this, and without evidence, that the arbitrators did not propose to find, or did not find, what in their opinion were and are THE boundaries, the true boundaries, the legal boundaries, is what, in the view of my advisers, neither Government can possibly do on any principle known in law, or recognized in public or private transactions.

The case does not even rest here. Sir Francis Hincks, the Arbitrator for the Dominion, has taken occasion to communicate the facts to the public. In a lecture delivered by him on the 6th May, 1881, he states that "the arbitrators were guided in their decision solely by Acts of Parliament, proclamations authorised by Orders in Council on the authority of Acts of Parliament, and international treaties. . . . The arbitrators were of opinion that, having reference to all the facts of the case, the boundaries set forth in the Award were supported to a larger extent than any other lines by these facts, and by the considerations and reasons which should and would guide and govern the determination of the questions by any competent legal or other tribunal." In the lecture he gives a *résumé* of the grounds on which the arbitrators proceeded, and all of these go to shew the legal boundaries. As to the western boundary, he says that "the arbitrators were clearly of opinion that the international boundary at the north-western angle of the Lake of the Woods* was the true point of departure." This point settled the western boundary as awarded, and it is in this district of the Province that the Federal authorities have actively interfered with the rights of the Province, and that the territory is most valuable, and a vigorous administration of justice most needed. The northern boundary (in the opinion of the arbitrators), owing to the vagueness of the

* Sessional Papers, Ontario, 1875, No. 14, p. 14.

† Sessional Papers, Ontario, 1879, No. 42.

‡ Sessional Papers, Ont., 1879, No. 13; Report of Boundary Committee, House of Commons, Can., 1880, pp. 237, 291.

§ Report of Boundary Committee, House of Commons, 1880, pp. 262, 301, 325.

|| Report of Boundary Committee, House of Commons, 1880, p. 480.

language employed in the proclamation issued under the Act of 1791, is more "open to doubt;" but the doubt of the arbitrators was, as Sir Francis Hincks states, "whether Ontario should not have had more territory;" not whether it should have had less. Indeed, the groundlessness of the notion that the Award gives to Ontario more territory than it is entitled to is further demonstrated by the statement of Sir Francis in the same lecture, that "the only questions of doubt were decided in favour of the Dominion; that both on the west and north the doubts were whether Ontario should not have had more territory." Your despatch objects to considerations of "convenience" being taken into account, as if such considerations could have nothing to do with the question of legal boundaries; yet convenience, or the argument *ab inconvenienti*, is a recognized element of legal interpretation where other considerations leave a question of construction in doubt.

Against all this evidence that the question which the arbitrators considered (whether they were bound to do so or not) was the question of the true legal boundaries, and that what they awarded was what they believed to be the true legal boundaries, your despatch suggests merely two circumstances: (1) that two of the arbitrators were laymen; and (2) that the Act of the Ontario Legislature 38 Vic., chap. 6, affords an inference in favour of the Federal assumption. An elaborate argument with regard to either point is unnecessary. As to the first point, four things may be shortly observed: (1) The question to be arbitrated upon involved facts as well as law. (2) If two of the referees were laymen, the remaining arbitrator, the late Chief Justice Harrison, was an able lawyer and Judge—a gentleman, it may be added, who was a Conservative in politics, and an old personal friend of the present First Minister of Canada. (3) The two arbitrators chosen by the Governments in 1874 were Judges—Chief Justice Richards and Judge Wilmet; Sir Edward Thornton was soon afterward selected by the two Governments as the third arbitrator. (4) The case was one in which eminent publicists, like Sir Edward Thornton and Sir Francis Hincks, were, by their training and mental habits, quite as well fitted as any lawyer to ascertain and determine the legal boundaries. Sir Edward Thornton, it may be observed, had four successive times been accredited to great Courts in Europe and America as an Ambassador of the highest rank and with full powers. He possessed, moreover, a most unusual topographical knowledge of this continent. Sir Francis Hincks had spent nearly half a century in colonial life, and had filled positions of the largest responsibility in the public service of Canada.

Then, as to the inference suggested from the Ontario Statute* passed under the provision contained in the Imperial Act, 34 and 35 Vic., chap. 38, which enabled the Parliament of Canada to increase, diminish, or otherwise alter the limits of a Province with the assent of its Legislature, it is only necessary to observe that the British North America Act contained no provision for settling questions of boundaries between Provinces, or between a Province and the Dominion; that, as between Canada and New Brunswick in 1851, a special Imperial Act for a like purpose was deemed expedient; and that by the legal effect of the Imperial Act, 34 and 35 Vic., chap. 38, concurrent Statutes by the Parliament of the Dominion and the Legislature of Ontario, fixing the true legal boundaries, would be as effectual as if a variation of the legal boundaries had been intended.

But would it be correct or proper to repudiate the Award if there had been some reason—which there is not—for assuming or supposing that it gave to Ontario boundaries somewhat more extensive than its strict legal boundaries? Whether the Award has or has not given accurately the true legal boundaries, it certainly does not assign to Ontario as much territory as Canadian Governments of which His Excellency's present Chief Adviser was either the head or a distinguished member, had repeatedly and confidently claimed for this section of Canada from the year 1857 up to the year 1870. Nor so much as was claimed for Upper Canada on the 15th January, 1857, when a Minute of Council, approved by His Excellency the Governor-General, was transmitted to the Colonial Secretary, in which it was stated that "the general feeling here is strongly that the western boundary of Canada

* R. S. O., chap. 4; 42 Vic., chap. 2.

extends to the Pacific Ocean." * Nor so much as in an official paper of the same period, the Commissioner of Crown Lands of Canada claimed for us, when he asserted that the westerly boundary of the Province extended "as far as British territory not otherwise organized would carry it, which would be to the Pacific; or, if limited at all, it would be by the first waters of the Mississippi, which a due west line from the Lake of the Woods intersected, which would be the *White Earth River*;" and when, with respect to the northerly boundary, the Commissioner pointed out that "the only possible conclusion is, that Canada is either bounded in that direction by a few isolated posts on the shore of Hudson's Bay, or else that the Company's territory is . . . a myth, and consequently that Canada has no particular limit in that direction." Nor has so much been awarded to us as Chief Justice Draper was in the same year sent to England by the Canadian Government for the very purpose of claiming or demanding for this section of the Province, as against the Hudson's Bay Company.† Nor so much as that distinguished Judge claimed accordingly before a Committee of the British House of Commons in May and June of that year.‡ Nor so much as in a letter from him dated 12th June, 1857, after he had elaborately examined the question, he communicated the opinion that we had a "clear right to."§ Nor so much as the Dominion Ministers, Sir George E. Cartier and the Honourable William McDougall, in an official letter to Sir Frederick Rogers, Bart., Under-Secretary of State for the Colonies, dated 16th January, 1869, insisted that Upper Canada so clearly included that "no impartial investigator of the evidence in the case could doubt it."|| But for the circumstance that, as between Great Britain and the United States, by the joint effect of the Treaties of 1794, 1814, 1818 and 1842,¶ the source of the Mississippi was taken to be, as between the United States and the British possessions, in Turtle Lake, at a point in nearly the same longitude as the most north-western point of the Lake of the Woods, the arbitrators could hardly have failed to hold that our westerly boundary was to be found at White Earth River, west of the Province of Manitoba as constituted previously to its extension by the Federal Parliament at its last session.

My Advisers feel surprised that, under all these circumstances, the Federal authorities should appear to have applied themselves for two years and more to the task of finding some plausible ground for repudiating the Award, even though they may hope (what my Advisers deny) that a rigid technical interpretation of the documents, in connection with the other evidence relating to the subject, might possibly limit the boundaries of the Province still further.

Your despatch says that the North-West Territory (of which the now disputed territory is assumed to be part) "was acquired on behalf of, and was in fact held for, all the Provinces comprised in the Dominion." In saying this, the Federal Government overlook the circumstances under which, and the means by which, the so-called acquisition was accomplished. In all the negotiations with the Hudson's Bay Company, the Federal Government insisted that almost the whole territory so said to have been acquired belonged already to Upper Canada (now Ontario); that the Hudson's Bay Company, so far as they were in possession of any part of this territory, were but squatters on it **; that this was perfectly clear; that "no impartial investigator of the evidence could doubt it." So strong were the grounds on which this contention rested, that the Company, acting under the advice and with the aid of the ablest counsel, and of some of the shrewdest men of business in England, gave up their claim to some 1,300,000 square miles of territory—half a continent—in consideration of being allowed to retain about 12,000 square miles of it, and of receiving for the rest the comparatively paltry sum of £300,000 sterling.†† The United States of America gave to the Russian Government in 1867 nearly five times as much (\$7,200,000) for the comparatively barren and valueless territory of Alaska, with an area not nearly half that to which the

* Sessional Papers, Canada, 1857, Vol. 15, No. 17.

† *Ibid.*, Vol. 15, No. 17.

‡ Hudson's Bay Rept. Com., England, 1857, pp. 212, 374, etc.

§ Book Arb. Docs., p. 391.

|| *Ib.*, p. 324.

¶ *Ib.*, pp. 20 and 21.

** Letter to Sir I. Rogers, 16th January, 1869, Book Arb. Docs., p. 324;

†† See Book Arb. Docs., p. 407 *et seq.*

Hudson's Bay Company released its claim. The comparatively small sum mentioned was accepted by the Hudson's Bay Company because of the reason there was to apprehend that the legal boundaries of Upper Canada would be held, if submitted to a trial, to include all or nearly all the territory which the Canadian Ministers claimed for it, instead of merely the 100,000 square miles, the right of Ontario to which the Federal authorities now persistently resist, in spite of a solemn Award, and in spite also of the previous contentions and demands of Ministers of the Dominion itself.

It is further to be observed that the Hudson's Bay Company never pretended, as against the territorial jurisdiction of Upper Canada, that they had any claim under their Charter to any territory south of the Height of Land.

In the claim against the Hudson's Bay Company, the Dominion Government were trustees for Ontario; and, on principles well recognized in equity jurisprudence, their compromise of the claim should enure to the sole benefit of Ontario, on condition only of this Province making good the paltry sums by which the compromise was effected. On the equitable principles referred to, as these are constantly applied between individuals, the Dominion Government had and have no right, without the consent of the Legislature and Government of Ontario, to hold the territory for the other Provinces of the Dominion. This consideration does not affect the question of what the legal boundaries of Ontario are, but does greatly strengthen the political and moral obligation of the Award being accepted by the Dominion frankly and promptly, and may be important hereafter in determining the questions which may arise between the Dominion and Ontario consequent on the delay which has occurred, and on the use made by the Dominion of the territory acquired by means of the supposed and asserted rights of this Province and otherwise.

It seems to my Advisers incredible that the Federal Government can have had all these considerations in mind when placing so much stress on the supreme "duty" of "rigidly" confining Ontario to its strictly "legal bounds," even at the expense of repudiating a solemn Award, made in good faith by arbitrators as distinguished, and as well qualified for their office, as could be found on this continent, or indeed anywhere.

The objection of the Federal Government to a settlement of the question by arbitration is further remarkable (in the view of my Advisers), because arbitration has always been a customary mode of settling questions of this very kind between two Governments.

It is scarcely necessary to illustrate so frequent an event in history, or so elementary a principle in international or municipal Law, as the settlement of disputed boundaries by reference. As early as 1697, a portion of the very territory now in dispute was by the Treaty of Ryswick made the subject of an arbitration, the parties submitting to the arbitration being no less personages than William III. of England, and Louis XIV. of France. The commissioners were "to examine and *determine* the rights and pretensions which either of the said kings hath to the places situated in Hudson Bay;" and the articles agreed to by the commissioners "shall be satisfied by both kings, and *shall have the same force and vigour as if they were inserted word for word* in the present Treaty." Even within the Canadian annals of this century there is a precedent, which is not without significance, for the arbitrated settlement of disputed boundaries between Provinces. In 1846, in order to adjust a boundary dispute which had prevailed since the Ashburton Treaty, between Canada and New Brunswick, Mr. Gladstone, then Secretary for the Colonies, constituted a Boundary Commission of the Attorney-General for Nova Scotia, and two officers of the Royal Engineers. A report was made defining a conventional boundary as the best attainable. The documents chiefly involved in that question were, as in the question now under discussion, the Proclamation of 1763, the Treaty of Utrecht, the Quebec Act of 1774, a Governor's Commission, and contemporary Maps and State Papers. The finding of the Commission was unfavourable to the Province of Canada, and its Executive Council disputed the "justice or equity of the recommendations of the Imperial Commissioner."* In view of the controlling importance attached by the Federal authorities in the present case to the strictly legal boundaries as being those only to which attention should be directed, the reply of Earl Grey (2nd June, 1850) reads curiously. His Lordship

* Sessional Papers, Canada, 1852-3, App. ZZ, p. 1.

said that "The decision of a court of justice appears unsuited to the case. The question in a legal point of view seems to turn on the words of the Quebec Act of 1774. But a tribunal could scarcely pronounce a decision which should define the whole line of separation between the Provinces. And, even if it could do so, it could only interpret and follow the letter of the Act, and not adopt any line of compromise which might be most advantageous to both parties." The matter was afterwards submitted to arbitration, the Governor-General selecting one arbitrator, the Lieutenant-Governor of New Brunswick another, and the two arbitrators choosing a third. After some delay a majority Award was rendered, reaffirming in the main the report of Mr. Gladstone's Commissioners, and the Award was enacted into the Imperial Statute 14 and 15 Vic., Chap. 63.

Now that you have communicated to the Government of Ontario, for the first time, the grounds on which the opposition of your Government to the Award proceeds, or is supposed to be defensible, and have thus given to this Government the opportunity of discussing the matter with your Government, my advisers are unwilling to think that the overwhelming reasons which this simple statement of the facts affords for a recognition of the Award, may not even now prevail with your Government to acquiesce in the Award, and to obtain from Parliament at its present session the proper legislation, as well as to get the Legislature of Manitoba to abandon the claim which the Federal Parliament transferred to that Province, in regard to the 39,000 square miles on the westerly side of Ontario.

The transfer to Manitoba included the 7,000 square miles of territory lying south of the Height of Land, and west of the line to which the Federal authorities desire to limit this Province. I have said this territory was not claimed by the Hudson's Bay Company under their charter, nor was there any ground or pretence for so claiming it. Before 1870 it had been treated at all times, and for all purposes, as belonging to this section of Canada. As such it had, before Confederation, been the subject of grants, licenses, and other transactions on the part of the Provincial Government. So much of the territory as was from time to time settled or occupied by a white population was governed; without any question on the part of anybody, by the laws, courts and officers of Upper Canada; and since Confederation the same territory has uninterruptedly been governed by the laws, courts and officers of Ontario; it has had municipal organization as part of this Province; the Ontario District of Algoma has for all purposes of the Dominion and Province been considered to include it; and Provincial money has from time to time been expended in making surveys, and in making roads, bridges, and other improvements, and in administering justice and maintaining peace and order in the territory. The land is part of certain territory which was the subject of an Order in Council of the Government of Canada, and of a treaty by that Government with the Indians, as long ago as 1850. To this territory Mr. Ramsay, counsel for the Dominion, reported (18 March, 1873) that Ontario was equitably entitled. He justly said that "in creating the Province of Ontario, it is not possible to conceive that the Imperial Legislature intended to convey to that Province, and to the Province of Quebec, less territory than the late Province of Canada actually enjoyed. Now, it is incontestable that up to 1867 the Government of Canada *de facto* extended to the Height of Land which forms the water-shed of the water system of the St. Lawrence and the Great Lakes. . . . It would therefore seem that in fairness to the Province of Ontario the old line of the Height of Land should be adopted as the western as well as the northern boundary of the Province of Ontario."* Thus, in refusing to leave this territory with Ontario, and in transferring to Manitoba their claim to it, the Federal authorities have endeavoured to take from Ontario territory which the chosen counsel of the Dominion Government, a Queen's Counsel of the Quebec Bar, had told that Government "it is not possible to conceive that the Imperial Parliament intended" to withdraw from this Province; and to which he declared it to be "incontestable that up to 1867 the Government of Canada, *de facto* [and therefore Upper Canada, *de facto*] extended," and which, in "fairness to the Province of Ontario," it should be allowed to retain. But all these considerations have been disregarded.

The only shadow of claim which the Federal Government can have to this portion

* Report of Boundary Com., Ho. Coms., Canada, 1880, p. 218.

of the disputed territory appears to be under an Order of Her Majesty in Council, dated 31st July, 1880, annexing to Canada all British territory in North America not already belonging to it (except Newfoundland).^{*} And if the legal interest in the territory in question became thereby vested technically in the Dominion, it is manifest that, both under the Award and independently of it, the authorities of the Dominion should have treated their acquisition as a trust for Ontario, and should at once have transferred the territory to this Province, instead of making it over, or endeavouring to make it over, to another Province.

Your despatch proposes that Ontario should abandon the Award, and submit the question anew to the Supreme Court of Canada for adjudication. This is the mode which your despatch intimates that your Government now prefer to any other for a new litigation of the question of title. It seems to my advisers to be remarkable that if this mode of settlement is so peculiarly appropriate and desirable as your despatch contends, the suggestion is now made for the first time. A great and obvious difference between a submission to the Supreme Court now, and a direct immediate reference to the Judicial Committee of the Privy Council is, that the former course would create years of further delay and involve great additional labour and expense; and without any advantage, as the final decision would be by the Privy Council. The proposal implies, too, that your Government contemplate that the evidence shall be taken anew, and according to the usual practice of taking evidence in ordinary cases. A suit, involving facts covering a period of nearly two centuries, and requiring documentary and other evidence from the Imperial archives in London, the archives of the Hudson's Bay Company, the Public and other Records in Paris, Washington, Albany, Quebec, Ottawa, and elsewhere, would afford unusual occasion for repeated and long-continued delays and innumerable harassing questions of procedure. If the object were delay, no better means of delaying a conclusive decision could be devised. My Government decline consenting to the submission.

The proposal for inviting one of the two Law Lords named in your despatch, or "some other eminent English legal functionary," to come to Canada "for the purpose of hearing the evidence and deciding upon the boundary question as one of law," seems to my advisers to stand next in order as a means of indefinite delay. In view of the objection taken by your Government to any form of arbitration, my Advisers were surprised at the proposal to submit the question to another referee, sitting alone, and without appeal, and who, though an English judge, would in this matter be acting as an arbitrator. Then it is extremely doubtful if either of the noblemen named would accept the invitation, especially in view of the time which taking the evidence might occupy; and if either were willing to accept the reference, my Advisers are of opinion that the decision of the question by any one English Judge, however exalted, would not "command general assent" to the same extent, or to anything like the same extent, as the decision of three Arbitrators of such eminent ability, and so well known to our people, and standing so high in public estimation here, as Sir Edward Thornton, Sir Francis Hincks, and the late Chief Justice Harrison. It may further be observed that no English judge has jurisdiction in his own country to adjudicate on the title to an acre of land, except subject to appeal; and that this Province should voluntarily abandon the adjudication of the three Arbitrators named, in order to have another trial and decision by one English judge, without appeal, as to the title to 100,000 miles of territory, is a proposal which does not commend itself to my advisers as one possible to entertain.

I may refer here to the charge which you make against the Government of Ontario, of refusing to contribute any land of the Province to the construction of the Pacific Railway, while you contrast with this alleged refusal the fiduciary character which your Government hold "in regard to the various Provinces of the Dominion whose money was expended in the acquisition of the territory, and who are now largely exerting and taxing themselves for the purpose of constructing a line of railway through it;" and you also contrast with the assumed refusal of the Ontario Government the course of the

^{*} Prefix to Dom. Statutes, 1880-81, p. ix.

Dominion in largely contributing to the work "out of the North-West Territories of the Dominion." My Government are not aware of any application to them by your Government for any contribution, in land or otherwise, to the work mentioned. My Advisers are of opinion also that in making the charge you have forgotten that the greater part of the territory referred to, and by far the more valuable part, was acquired by the Dominion through setting up the title thereto of Ontario in opposition to the Hudson's Bay Company; that so far as regards that portion of the territory which does not in law or equity belong to Ontario alone, Ontario is one of those Provinces of the Dominion to whom the North-west Territories belong, whose money has been expended in their acquisition, and whose people are taxed to construct the railway; and that, in fact, by far the larger part of the money so expended and of the taxes so imposed is contributed by the people of Ontario. It is with their money and their lands, far more than with the money or lands of any of the other Provinces, that the railway is being constructed; and why Ontario should be called on to offer a further contribution out of lands within its own bounds, towards implementing the contract entered into for this Dominion work, my Advisers fail to perceive.

The expressed object of my despatch of the 31st of December last was to ascertain officially whether your Government could not be induced, without making further unnecessary delay, to consent to some just and adequate arrangements for the government of the country, the preservation of the timber, the granting of titles to settlers, and the recognition of an undisputed authority to enforce order and administer justice. The evils of the existing state of things in the disputed territory are already so great, and are increasing so rapidly, and it had become "so important that this Province should without further delay have peaceable and undisputed possession of whatever limits it is entitled to," that my Government were "willing, with the concurrence of the Legislature, to submit the matter to the Privy Council on condition of consent being given by the Dominion Government, and that of Manitoba, to just arrangements for the government of the country in the meantime. Without such "provisional arrangements" my despatch stated that the Province might as well wait for the confirmation of the Award by another Parliament, as go to the expense and have the unavoidable delay of a second litigation. I therefore desired to know whether the Dominion Government were willing to agree to the provisional arrangements which had theretofore from time to time been suggested in written communications by this Government, and by the Attorney-General on their behalf, and which my despatch repeated; and if your Government were not willing to agree to the arrangements specified, I desired to be informed what the best terms were to which your Government were prepared to agree.

With respect to provisional arrangements, my advisers regret to find, from your despatch, that the Federal Government decline to agree to the suggestion that, "pending the dispute, the Province should have the authority of the Dominion to deal with the lands and timber as in the other parts of the Province (subject to an account if the title should ultimately be decided to be in the Dominion and not in the Province);" and my advisers further learn with regret that the Federal Government decline to make any arrangement whatever as to either the timber or the lands, and even intimate that if the provisional arrangement of 26th June, 1874, which gave to the Dominion the temporary right of selling lands west of the provisional line is at an end, the effect will be held by the Federal Government to be, "to leave both parties to assert their own rights, in reference to all the questions involved,"—an observation which seems to mean that the Federal Government will in that case proceed to deal at their discretion with the lands on both sides of this line, notwithstanding the dispute as to the title.

My Advisers are of opinion that no provisional arrangements can be adequate which do not (amongst other things) include just arrangements regarding the sale of lands, and the preservation of timber. Even to leave to Ontario the sole government of the country pending the dispute, while the Federal Government continue to deny to this Province the right of dealing, provisionally or otherwise, with a single mile of the territory, or a single tree growing thereon, and insist on remaining unshackled in their own dealings with both land and timber to which they have no right, would be a concession of little

practical value, and entirely insufficient to justify the abandonment by this Province of the awarded rights which it possesses.

But your despatch does not even propose to leave to Ontario the sole government of the territory pending the dispute. My advisers understand from the manner in which your despatch refers to the laws of Ontario, that the meaning of your proposal is, that the two Provincial Governments should have concurrent authority in the territory—an arrangement which my advisers respectfully think would in practice be absurd and impossible. To remedy, in any adequate way, the present unhappy state of the territory, my advisers consider it absolutely necessary that (pending the dispute) the Ontario Lieutenant-Governor in Council should, in the territory in question, have the authority which, in the public interests, is exercised in the other parts of this Province, and is no less needed in this unsettled territory. So, the Legislature of Ontario should be at liberty (pending the dispute) to legislate for the territory from time to time, as its needs and interests require. My advisers are of opinion that for the peace and order of the territory, the due administration of justice, the development of the country, and the interests of settlers and others, nothing short of an unqualified application to the territory of all the laws of Ontario, including the authority of its Government and Legislature, would accomplish the objects in view; and my advisers entirely fail to see that any legitimate purpose would stand in the way of such a provisional arrangement. As observed in my former despatch, it is not to be supposed that the Province of Manitoba, with its small revenue, and with the enormous demands upon it for the government and development of its undisputed territory, can desire the further expense and responsibility of the temporary government of 39,000 miles of disputed territory, which may never be theirs, and to which such of the people of Manitoba as may take the trouble to learn the facts must feel it not improbable that Ontario has the right.

If a provisional arrangement were made, and confirmed by proper legislation, for the government of the country by Ontario, without dispute, until the settlement, somehow, of the question of title, there might not be excessive embarrassment or inconvenience in giving effect to the suggestion "that all Justices of the Peace residing in the disputed territory should receive commissions from both Ontario and Manitoba;" or, perhaps, in giving effect to the further suggestion, "that all the judges of the two Provinces should be put in a joint commission as regards the disputed territory," if these concessions should be required by the authorities of the Dominion and of Manitoba; but the details necessary for carrying out these suggestions would require careful consideration by all parties concerned.

With reference to your observations on the enlargement of the boundaries of Manitoba by the Act of last session, this Government have made no complaint of the extension of that Province by the addition to it of undisputed territory. On the contrary, in my despatch of the 15th March last, it was observed that "so far as the territory to be comprised within the limits of the Province of Manitoba is clearly and undisputably within the jurisdiction of the Parliament of Canada, my Government rejoice at the extension of that Province, as affording a wider scope for the energies of its people and Government, and as giving to a large number of settlers in Keewatin and the North-West territories the direct benefit of Provincial and Municipal Government. But while the extension of the boundaries in directions as to which there is no dispute is matter of congratulation," the transfer of the disputed territory to that Province was strongly objected to, for reasons there set forth. A hope was expressed, which the result proved to be vain, that, in view of the representations made in the despatch, your Government might "even yet see fit so to modify the measure before Parliament as to deprive it of its objectionable features, while still conceding all necessary advantages to the Province of Manitoba, in whose rapid progress and development this Province, as a portion of the Dominion, feels profound satisfaction."

The wrong which your Act of last session did, consisted, not in adding to the Province of Manitoba nearly 100,000 miles of undisputed territory, but in making the further unnecessary and objectionable addition of 39,000 miles of territory not only disputed, but in fact belonging to this Province. This feature of your Act greatly

complicated matters, inasmuch as the Government of that Province has since assumed to exercise jurisdiction in the disputed territory, with the concurrence and approval of your Government; and inasmuch also as the consent of the Government and Legislature of Manitoba became thenceforward necessary to any arrangements which the Federal authorities and those of Ontario might see fit to make, whether for determining the question of right, or for providing for the government of the country pending the dispute. It is satisfactory to learn from your despatch, that your Government are confident that the Government and Legislature of Manitoba would concur in any arrangement of which your Government may approve. But if the Federal Government will make no just provisional arrangement in regard to the lands and timber; and continue, notwithstanding the dispute, to deal with these as subject to their own discretion; and yet demand that this Province abandon the Award, and submit to a new litigation of the question of title, as the condition of making or procuring the other just and necessary provisional arrangements proposed, my Advisers are of opinion, and feel bound frankly to state it, that Ontario should not and will not submit to a demand which they cannot but consider most unreasonable.

I am advised to remind you that Ontario with its awarded boundaries has not so large an area as either Quebec or Keewatin; or an area much exceeding the undisputed territory given to Manitoba; or much more than half the area of British Columbia.

Your despatch seems to intimate that no licenses have been issued to cut timber east of the provisional boundary line agreed to in 1874 (you mention the year 1870, it is presumed, by mistake); and you add, that information regarding all permits, licenses and other transactions would be readily furnished to the Government of Ontario at any time. This Government did not suppose that any licenses had been issued by the Federal Government to cut timber east of the provisional line, and will be glad to be furnished with the information promised in respect to their transactions of any kind in this part of the disputed territory.

My Advisers regret that your Government give no information, and do not apparently offer any, with respect to transactions affecting that important part of the disputed territory which lies west of the provisional line, though such information has been repeatedly requested on behalf of the Ontario Government. My Advisers once more respectfully insist that, whether the title of Ontario to the territory is disputed or admitted, and whether the provisional agreement of 1874 is in force or at an end, the Government and people of Ontario are entitled to full information respecting these transactions, including (as my despatch of the 31st December mentioned) copies of all grants, licenses, permits, regulations, instructions, letters, documents and papers of every kind relating to the same.

My Advisers regret also that your Government have not thought fit to give any answer to that part of my despatch which referred to the reported grant to the Pacific Railway Company of land for their line of road through the disputed territory, and (for timber purposes) a breadth of twenty miles on each side of this road throughout its whole length, or to my request for copies of Orders in Council and other documents, if any, relating to the transaction.

Your despatch refers to an interview of Sir John Macdonald and the Minister of Justice with the Attorney-General on the 21st November last. The Attorney-General considers that there are several (no doubt unintentional) inaccuracies in what is said or implied in your despatch as to this interview, and as to what took place then and afterwards. I do not deem it necessary to refer to any of these inaccuracies further than to observe that the interview was not "sought" by the Ministers named, but by the Attorney-General, in letters to Sir John Macdonald and Sir Alexander Campbell respectively; and that the Attorney-General's communication to the Minister of Justice with respect to the proposed reference to Lord Cairns or Lord Selborne was made on the 30th of the same month, and not at a more recent date. But whatever may or may not have been said at that interview or otherwise, your despatch states what your Government desire now with a view to the settlement of the dispute, and what provisional arrangements your Government are willing now to make; and, while my Government do not

approve of either of the two modes of settlement which you prefer in case there should be a new litigation, and though they regard the provisional arrangements which you mention as entirely insufficient to justify (for the sake of such arrangements) a recommendation to the Legislature of Ontario to abandon any of the awarded rights of the Province, and at this late date to voluntarily enter upon a new litigation on the question of Title; still, my Government trust that the Federal authorities will recognize the duty of making the provisional arrangements required, without attempting to exact from the Province, as a condition, the abandonment of its awarded rights, and a new litigation of the question of Title.

The evils which the territory is enduring in consequence of the dispute should surely be reduced to a minimum by every means in the power of the Federal authorities. The dispute is by them; the evils are of their creating; and no one can justify leaving this immense territory without settled laws and settled government. Ontario has a special interest in this object, apart from the value of the territory, its lands and mines and timber; as many of the people of the Province have gone there to settle or to trade, and more desire to go. Some local improvements, too, which Ontario might at once undertake, would serve to open and develop important sections of the country. Municipal organization is already necessary in some localities, and our people in the territory desire the extension to it of our school system, and desire that assistance from our School Funds which our people in the rest of the Province receive. It is with the laws of this Province that the settlers are familiar; the Province has organized courts in the territory, and has appointed officers to administer our laws. My Advisers hope that, without attempting to exact from the Province conditions to which its representatives cannot agree, the Dominion authorities will at last take the "measures necessary to prevent confusion in these important respects;" will, as regards criminal matters, supply by the proper legislation the deficiencies pointed out by this Government in past communications with respect to the Dominion Statute 43 Vic., chap. 36; and will, as regards matters of Provincial jurisdiction, obtain the consent of Manitoba to the legislation immediately required for placing beyond question the subjection of the territory to all the laws of Ontario, until the termination of the dispute which the Dominion authorities have raised. My Advisers respectfully suggest that the simplest and best way of accomplishing the last of these necessary objects would be, by obtaining from the Legislature of Manitoba an Act consenting to the repeal of so much of the Act of last Session as had the effect of assigning to that Province the claim of the Dominion to 39,000 square miles of the disputed territory, and by procuring from the Federal Parliament an Act giving effect to such consent, and containing the other necessary provisions for securing the important objects mentioned.

But I am advised that no provisional arrangement would be so satisfactory, or so beneficial to the development and settlement of the territory, the maintenance of order, and the due administration of justice therein, as the just course of obtaining, without further delay, by proper legislation from the Federal Parliament and the Legislature of Manitoba, the recognition of the Award as a final adjustment of the boundaries of this Province. The evils already endured are beyond recall, but the continuance or aggravation of them from this time forward is in the hands of your Government.

I earnestly commend all these considerations to the best attention of the Federal Government.

I have the honour to be, Sir,

Your obedient servant,

J. B. ROBINSON.

To the Honourable J. A. Mosseau,
Secretary of State, Ottawa.

RESOLUTIONS OF THE LEGISLATIVE ASSEMBLY OF ONTARIO RESPECTING THE BOUNDARY QUESTION, AND RESOLUTIONS PROPOSED IN AMENDMENT, 9TH MARCH, 1882.*

The Attorney-General moved, seconded by Mr. Pardee, the following

RESOLUTIONS :

1. That, having considered the despatches of the Government of Ontario to the Federal Government, dated respectively 31st December, 1881, and 18th February, 1882, and a report of the Attorney-General, dated 1st November, 1881, on the subject of those portions of this Province to which the Federal authorities have asserted an unjust and unfounded claim, this House desires to record its concurrence in the views and representations which are expressed in the said despatches and report.

2. That the persistent endeavours of the Federal authorities to deprive this Province of one-half of its territory are, in the interest of the people of Ontario, to be opposed by every constitutional resort within the reach of this Province.

3. That this House protests against the conduct of the Federal Government in enforcing a pretended ownership in this territory ; in assuming to make sales therein without the concurrence of the Provincial authorities ; in promoting, under colour of Federal grants and licenses, the destruction of its valuable timber ; in inducing the inhabitants to set at defiance the laws and authority of this Province ; in prevailing on a neighbouring Province to assume jurisdiction in the territory by establishing courts and by other executive acts, and thereby to assist the Federal Government in neutralizing or embarrassing the territorial jurisdiction of this Province.

4. That a unanimous award was made on the 3rd August, 1878, determining the boundaries between this Province and the territories of the Dominion ; that this award was made in pursuance of a reference designed to be binding and conclusive, entered into by the two Governments in good faith, with the knowledge of the Parliament of Canada, and acquiesced in until long after the proceedings under the reference had terminated ; that this award was made by distinguished Arbitrators of the highest character, after an exhaustive collation of all known evidence bearing on the subject ; that the award assigned to Ontario less territory than His Excellency's present advisers, as well as previous Canadian Governments, had, in other contentions, invariably claimed to lie within this Province ; that more than two years elapsed before the Federal Government gave any notice of an intention to reject the award ; and that the course of the Federal Government in now rejecting such an award is unprecedented in British practice, is opposed to the usages of civilized government, and is a grievous wrong to the people of Ontario.

5. That the extension of Manitoba by the Federal Act of last Session receives, so far as the territory added is undisputed, the hearty approval of the inhabitants of Ontario ; but, in the name of the people of this Province, this House protests against the transfer attempted by the same Act, of 39,000 square miles of the territory which was awarded to this Province, and which forms by far the most valuable portion of that territory ; that such transfer greatly aggravated the difficulties already created by the unjust proceedings of the Federal Government, and can only be regarded as an act of direct antagonism and hostility to the interests and rights of this Province.

6. That while the attempted transfer to another Province of any part of the territory awarded to Ontario was a grievous wrong to this Province, this House cannot too strongly express the injustice of including in the transfer 7,000 square miles of the Ontario District of Algoma, south of the height of land, which before Confederation had been an undisputed part of Upper Canada *de facto*, had been settled by its people and governed by its laws, to which no counter claim had been set up from any quarter, and which after Confederation continued to be regarded and dealt with as an undisputed part of this Province, until the present controversy arose ; that the British North America Act expressly declared that what "formerly constituted the Province of Upper Canada shall constitute the Province of Ontario ;" and, therefore, that every consideration of Imperial

intention, as well as of justice and fair dealing, demanded from the Federal authorities a confirmation of the title of Ontario to this part of the territory, even if such confirmation had, in law, been required.

7. That it is on the westerly side of this Province that, independently of the award, the title of Ontario to the territory is the most clear, and the territory the most valuable; that it is in this part of our unorganized territory that undisputed authority and a vigorous administration of the law are most needed for the maintenance of peace and order, the suppression of illicit liquor-selling, and of drunkenness, immorality, and crime; that the course of the Federal Government has to a large extent paralyzed the efforts hitherto made under the authority of this Province for the prevention of disorder; that by the effect of the Dominion Act of last Session relating to Manitoba, and by the action taken thereunder with the concurrence and approval of the Federal Government, two sets of Provincial laws distract settlers; two sets of Provincial courts and officers are set in array against one another; no sure title can be obtained to any land or timber in the territory; squatters and trespassers, so far as Federal authority can accomplish such a result, are to be the only settlers; the country is being stripped of the timber which is its most valuable product; capital and immigration are diverted to other territories, where a settled Government and settled laws prevail; an interest antagonistic to this Province is created in those who go to the territory, by giving to them seeming titles the validity of which depends on resisting successfully the authority of Ontario; and complications are created which, if allowed to continue without interference, will seriously impede the practical incorporation of the territory with this Province, to which it belongs.

8. That the policy of the Federal authorities is inexplicable except in the light of the avowal which, in the debate in the House of Commons on the Manitoba Bill, was publicly made by the First Minister, when he announced that the purpose was to "compel" the Government of this Province not to insist on the awarded boundaries; was to "compel" them "to come to terms," and to induce such a condition of the territory that "they must do so;" and the Minister predicted that the Government of this Province would "come to terms quickly enough when they found they must do so." That this House approves of the refusal of the Government of this Province to be coerced into consenting to the proposals contained in the despatch of the Federal Secretary of State to His Honour the Lieutenant-Governor, dated the 27th January last, which were the only terms proposed to this Province since the award.

9. That it would be most unjust for the Federal authorities to entangle this Province in a second litigation, especially after having delayed for more than three years since the award to propose any mode or terms of settlement. But this House concurs with the Government of the Province in recognizing the possible expediency, under all the circumstances, of an immediate reference to the Privy Council of the questions of the award and the boundaries, on the condition (in order to avoid further delay and unnecessary difficulty) that the reference shall be based on the evidence collected and printed for the Arbitrators, with any additional documentary evidence, if such there is; and on the further condition that, pending the reference, the territory, its population and lands, shall, by the legislative consent of all parties, be subject in all respects to the laws of this Province, including the jurisdiction of its Legislature and Government.

10. That as provisional arrangements to this effect have been ineffectually pressed on the Federal Government, it cannot be forgotten, in deciding upon the future policy of the Province, that the forbearance hitherto exercised in hope of an amicable settlement has been taken advantage of by the Federal authorities to destroy our timber, and to complicate to our prejudice our relations with the territory; that the territory belongs to Ontario, and not to either the Dominion or Manitoba; that before Confederation it was claimed by successive Governments of the Province of Canada as belonging to Upper Canada; that after Confederation the same claim was made in official documents and otherwise, by Federal Ministers, and was by them, on behalf of the Dominion, affirmed to be a clear title, such that "no impartial investigator of the evidence in the case could doubt it;" that inasmuch as the territory forms part of Ontario, it follows that the only legal government which is possible in the territory is government by Ontario; that the only laws which are in force are the laws of Ontario; that the only grants of land which

can convey a legal title are grants by this Province; that valid licenses for mining or for cutting timber can be issued by this Province alone; and that all the acts of the Federal Government in pretending to deal with lands, timber or mines, and all legislative and executive acts of the Province of Manitoba with reference to the territory, are illegal and of no force or validity. In view of these considerations, it has, in the opinion of this House, become the duty of this Province to assume without further delay the full government and ownership of the territory, without reference to the claims of the Federal Government.

11. That this House is unwilling to believe that the Federal authorities are so determined to make the territory a prey to unsettled government and disputed jurisdiction, and so determined to "compel" this Province to abandon its just and awarded rights, that the Federal Government will offer forcible resistance to the laws and the constituted authorities of Ontario; and this House is of opinion that, while collision with the Federal authorities is to be avoided, the stipendiary magistrates and the other officers of this Province should be instructed to see that as far as possible our laws are enforced, peace and order preserved, and justice duly administered as in other parts of this Province, and that trespassers are not allowed to destroy the property of the Province; and if the authorities of this Province should, in the discharge of their constitutional functions, be resisted by Federal authority, the responsibility is to be left with the Federal authorities, and the remedy to the people whom the Federal and Provincial authorities respectively represent.

Mr. Meredith moved, seconded by the Hon. Mr. Morris, by way of

PROPOSED AMENDMENT TO THE FOREGOING RESOLUTIONS,

That all the words in the first Resolution after the word "That" be struck out, and the following substituted therefor: "by the provisions of the British North America Act, 1867, the limits of the Province of Ontario are declared to be those which formerly constituted the limits of Upper Canada.

"That neither the Government nor the Parliament of Canada has, or has ever claimed to have, any authority, without the express consent of the Province, to define its boundaries, or to in anywise interfere with its territorial rights or limits.

"That differences having arisen between the Governments of the Dominion and of the Province with reference to the true boundaries of the Province, the Government of Ontario entered into negotiations with the Government of the Dominion for the determination of the true situation of the northerly and westerly boundaries of the Province, as defined by the British North America Act, and in the first Session of the year 1874, obtained from this House its sanction for the submission of the questions in dispute either to arbitration or to the Judicial Committee of Her Majesty's Privy Council, but the Government of the Dominion (then led by the Honourable Alexander Mackenzie) failed to ask or to obtain the like authority from the Parliament of Canada.

"That in the year 1874 an agreement was entered into between the two Governments for the administration and disposal of the lands within the limits of the territory in dispute, and by that agreement conventional boundary lines were adopted, and it was agreed that the Government of Ontario should, 'until the final adjustment of the true boundaries of the Province,' have the charge, management, and disposal of the lands east and south of such conventional boundaries, and the Government of Canada of the lands west and north of them, in each case subject to account when the true boundaries should be definitely adjusted; and the Dominion authorities have, ever since the agreement was made, and under the authority of it, been and are now in possession of the land west and north of the said conventional boundary lines; and the Province of Ontario has been and is in undisturbed possession of the lands east and south of the said conventional boundary lines, which last-mentioned lands comprise two-thirds of the whole territory in dispute.

"That subsequently, and in the same year (1874), an agreement was entered into between the two Governments that, subject to the approval of the Parliament of Canada and of the Legislature of Ontario, the matters in dispute between them should be referred to arbitration, and by the terms of that agreement it was provided that concurrent

action should be taken by the two Governments in obtaining such legislation as might be necessary for giving 'binding effect' to the conclusions which should be arrived at.

"That in pursuance of the agreement last mentioned, the Legislature of this Province in the year 1874, passed an Act for the purpose of giving effect to the award of the Arbitrators when made; but the Government of the Dominion, then led by the Honourable Alexander Mackenzie, though applied to for that purpose, refused to ask the Parliament of Canada to pass a similar Act, and claimed to reserve, and insisted upon reserving, to the Parliament of Canada, the right of approving or disapproving of the award after it should be made; and the Government of Ontario assented to and acquiesced in the position taken by the Dominion Government, and to the reservation of that right to the Parliament of Canada.

"That, notwithstanding that the agreement of reference was made in the year 1874, and although negotiations were subsequently entered into between the two Governments for the adoption of a compromise line (the particulars of which negotiations this House has been unable to obtain), the case was not presented to the Arbitrators for consideration, and was not adjudicated upon by them until the month of August, 1878.

"That the Parliament of Canada, in the exercise of the right so expressly reserved to it, with the full consent of the Government of Ontario, has withheld its assent to the adoption of the boundaries as defined in the said award.

"That while this House regrets that the Parliament of Canada has not seen fit to give such assent, it cannot fail to recognize the right of that body, in the exercise of its powers, to adopt that course which, in the judgment of its members, sound policy and the rights of the people of the whole Dominion dictate, and for the adoption of which they are responsible to the people of Canada.

"That the award made by the Arbitrators being, as it now is, by reason of the premises, wholly nugatory and inoperative, the whole question remains undetermined, and the parties to the negotiations are remitted to their original rights and position, and it is now, in the judgment of this House, in view of the grave difficulties and inconveniences arising from delay, of paramount importance that an early settlement of the questions in dispute should be come to.

"That, in the opinion of this House, it is the duty of the Government of Ontario, under the authority of the resolution above referred to (the reference to arbitration having proved abortive), to take steps for the immediate submission of the matters in dispute between the two Governments, for decision by the alternative mode authorized by the said resolution—a reference to the Judicial Committee of Her Majesty's Privy Council, and a mode which was proposed by the Government of Canada, led by Sir John Macdonald, as early as the year 1872, and which that Government is still willing (as shown by the correspondence submitted during the present session) to agree to.

"That in view of the statement of Sir Francis Hincks, one of the Arbitrators by whom the award was made, that every doubtful point arising upon the reference was, by the Arbitrators, decided against the claims of Ontario, and the statement of the Attorney-General that the territory awarded to this Province comprises less than one-thirteenth of the territory claimed by her, it is impossible that the result of a reference to the Judicial Committee of Her Majesty's Privy Council will be less favourable than that of the reference to arbitration.

"That to postpone action with a view to the final settlement of the matters in dispute, in the hope that the electors of the Dominion will reverse the decision of the Parliament of Canada, will be to incur the risk that the questions as to the territory in dispute 'may be overshadowed by other issues, which in Dominion politics divide parties;' and in the very probable event of the Dominion Government being sustained, it will then be necessary to resort to the means now proposed for the settlement of the matters in dispute, and the valuable time intervening will have been thrown away.

"That the legislation of the Dominion Parliament providing for the extension of the boundaries of Manitoba could not, did not, and did not profess to take from this Province any part of the territory assigned to it by the British North America Act; but, on the contrary, expressly provided that the easterly boundary of Manitoba should extend only so far east as to meet the westerly boundary of the Province of Ontario.

"That the correspondence with the Dominion authorities satisfies this House that the Government of the Dominion, notwithstanding that, by the terms of the agreement for the adoption of the conventional boundaries before referred to, it is entitled to administer the lands in the territory west and north of the conventional boundaries until the final adjustment of the true boundaries of the Province, is prepared to come to reasonable arrangements for the government and administration of affairs in the territory in dispute ; and, in the opinion of this House, it is the duty of the Government of Ontario to enter into immediate negotiations with the Government of the Dominion with a view to effecting suitable arrangements of that character, including an equitable arrangement for the administration and disposal of the lands in the territory in dispute.

"That this House deeply regrets that while a speedy settlement of the matters in dispute, by a reference to the Privy Council, is being pressed on their attention by the Government of Canada, and a willingness expressed by it to arrange reasonable terms for the government of the territory in the meantime, the advisers of the Crown in Ontario manifest a disposition to retard that reference, reject amicable proposals for the government of the territory, and invite the House to take the law into its own hands and resort to rash measures, calculated to endanger the peace of the Dominion and imperil the best interests of the Province.

"That this House further regrets and deprecates the violent, improper and reckless attitude assumed by the advisers of the Crown in Ontario with regard to the important questions to which these resolutions relate, and affirms that the suggested action is not dictated by a desire to promote the best interests of the Province, but by an intention to create political capital at the expense of arousing ill-feeling and animosity between the Province of Ontario and the rest of the Dominion.

"That while this House is prepared to firmly maintain, by all constitutional means, the rights of this Province, it is compelled to protest, and does earnestly protest, against the action of the advisers of the Crown for Ontario in the premises—action which is inimical to the best interests of the Province, hostile to the Crown, and which will not be sanctioned or tolerated by the loyal people of the Province of Ontario."

The Amendment having been put, was lost on the following division :—Yeas, 25 ; Nays, 50.



